

83-1900

FILED

MAY 18 1984

No.

ALEXANDER L. STEVAS

CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1983

JOSEPH S. ROHDE,

Petitioner,

vs.

WILLIAM F. BOLGER, Postmaster General,
UNITED STATES POSTAL SERVICE, et al.,

Respondents.

JAMES McDONALD, et al.,

Petitioners,

vs.

WILLIAM F. BOLGER, Postmaster General,
UNITED STATES POSTAL SERVICE, et al.,

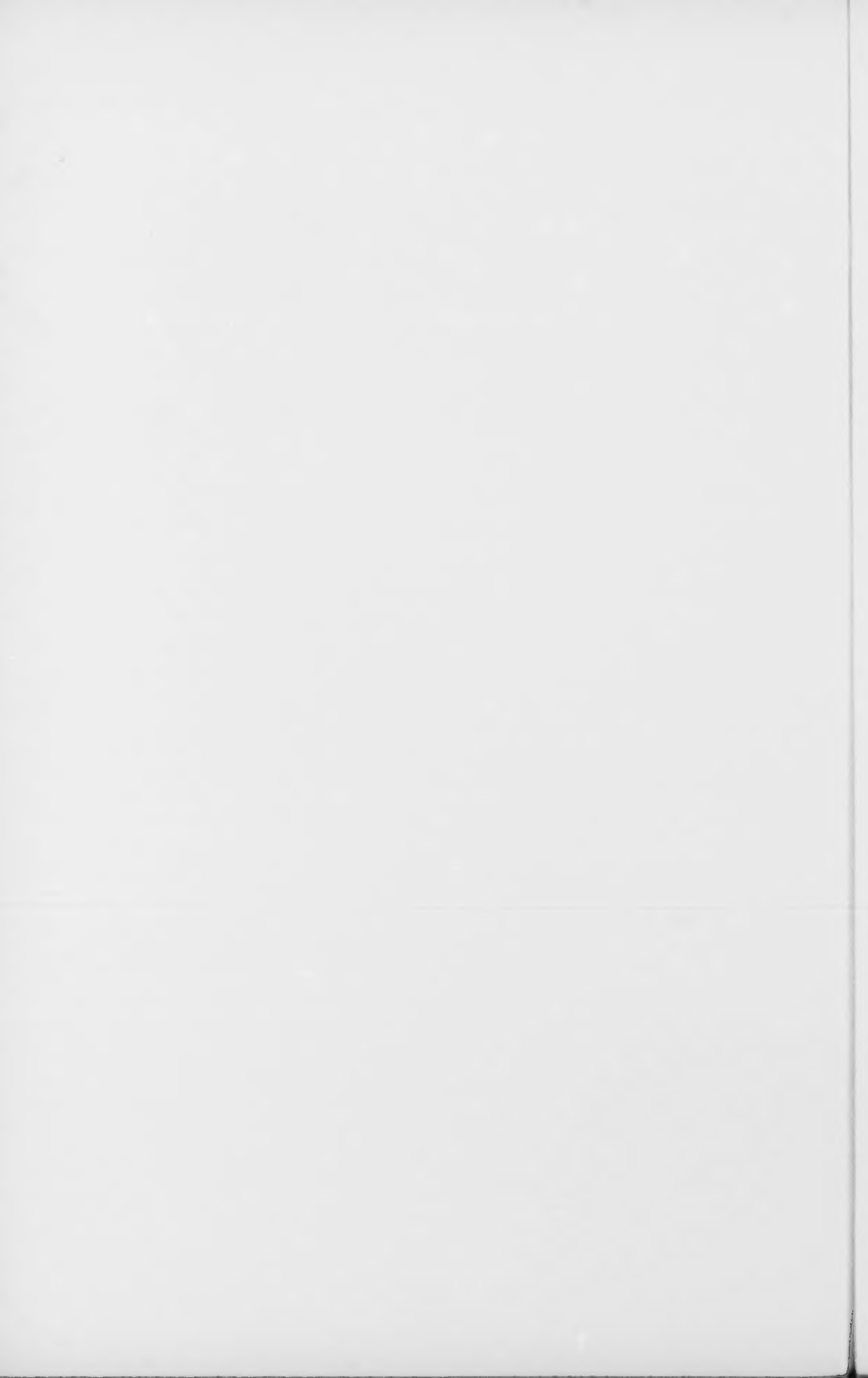
Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT**

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Of Counsel



(A.) QUESTIONS PRESENTED FOR REVIEW:

1. Whether disabled federal employees are Entitled to Damages incurred due to discrimination by federal employers in an action for violation by Defendants of Sections 501 and 505 of The Rehabilitation Act of 1973, as amended, 29 U.S.C. Sections 791 & 791a (a)(1) and 42 U.S.C. 2000e-16, 42 U.S.C. 2000e-5(f)-(k) and 28 U.S.C. 1331.

2. Whether Punitive Damages are available to disabled federal employees under an action described in paragraph #1. above, when defendant's conduct is tortious in nature.

3. Whether terms of settlement agreement approved by the trial Court, and affirmed by the 7th Circuit Court of Appeals, are too Vague to be understood by Class Members affected thereby, under standard for vagueness set by Illinois Supreme Court & 7th Circuit.

4. Whether District Court *abused its discretion* in approving class action settlement agreement that is:

a. so vague in its terms that class members do not understand their rights thereunder;

b. so vague in its terms and meaning that it cannot be reasonably enforced by the injured class, now or in the future.

c. not providing class members recovery of their damages, actual or punitive, directly or indirectly caused by the violation of the statutes complained of supra by Defendant employer, the U.S. Postal Service and individual agents thereof.

d. lacking term figuring rate for back pay award to class members at OVERTIME rate, due to punishment nature of assigning class members to come to work at 2:00 A.M. instead of allowing them to work normal day-time hours as their doctors said was necessary to prevent aggravation of existing medical conditions.

(B.) LIST OF PARTIES TO PROCEEDING:

1. Joseph S. Rohde, Petitioner and representative of a Certified Class,

James McDonald and 26 other named plaintiffs, part of the Class,

William F. Bolger, Postmaster General,
UNITED STATES POSTAL SERVICE,

Frank C. Goldie, Chicago Postmaster,

R. B. Gould, Regional Director, Employee
& Labor Relations, Central Region United States Post
Office

OTHER NAMED CLASS MEMBER PLAINTIFFS

2. Allen Alexander, Willie Armstrong, Lelita Beckman, Harry Bentley, Doris Boardwater, Henry Charity, Aldine Davis, Carolyn Davis, Greta Elcan, Louise Flowers, Willie Fuller, Barbara Harris, Mary Horton, Philip Murray, Sharon Nelson, Willietta Noble, Joseph Paladino, S. Floyd Perry, Wilbert Robins, Willie Roy, Estelle Saddler, Dave Singleton, John Smith, Gracie Williams & Julia Whitley. Unnamed Class Members.

Designation of Class by trial court order on March 23, 1983.

3. "All persons who were qualified handicapped employees of the UNITED STATES POSTAL SERVICE (as defined by the Rehabilitation Act of 1973 as amended in 1978, 29 U.S. 791 et seq. and interpretation thereof) and assigned light duty, limited duty or rehab limited duty in the Chicago Postal Office at any time during the period May 17, 1978 to the present, and who, with or without reasonable accommodation, could perform the essential functions of their position in the Chicago Post Office." (See Appendix P. 44a and 45a.)



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(D.) Opinions in courts below: (see Appendix hereto)

1. Class action settlement agreement approved, by trial court and affirmed by 7th circuit and order reflecting same.
2. Findings of Fact & Conclusions of Law by trial court.
3. Order of 7th Circuit entered April 3, 1984 affirming trial court action.

(E.) JURISDICTIONAL STATEMENT

The 7th Circuit affirmed an order of District Court approving Class Action Settlement Agreement on case filed under Federal Statutes supra, and Jurisdiction was based on 28 USC 1291. S.Ct Rule 19 allows a party to file Writ of Certiorari to review a judgment of a Federal Court of Appeals; 28 USC sec. 1254 allows Writ of Certiorari to be filed to ask for review of a civil case decided by a court of appeals. (1) Judgment to be reviewed is dated April 3, 1984 (2) Jurisdiction to review is based on 28 USC 1254 & S.Ct. rules 19 & 20.

(F.) STATUTES USED:

1. The Rehabilitation Act of 1973, as amended, 29 USC 791, 794a.
2. Sections 501 & 505 of said Rehabilitation Act, as amended.
3. 42 USC 2000e-16.
4. 42 USC 2000e-5(f) - (k).
5. 42 USC 1331.

28 USCS 1331

Federal question; amount in controversy; costs
(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States, except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of \$10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

29 USC Section 794

794a. Remedies and attorneys' fees

(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16 (42 USCS 20003-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5(f) through (k) (42 USCS 2000e-5(f)-(k), shall be available, with respect to any complaint under section 501 of this Act (29 USCS 791), to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate re-

lief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1964 (42 USCS 2000d et seq.) shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under Section 504 of this Act (29 USCS 794).

(b) In any action or proceeding to enforce or charge a violation of a provision of this title (29 USCS 790 et seq.), the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs. (Sept. 26, 1973, P.L. 93-112, Title V, 505, as added Nov. 6, 1978, P.L. 95-602, Title I, 120, 92 Stat. 2982.)

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

(c) Civil action by party aggrieved. Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717 (a) (subsec. (a) of this section), or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from

the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706 (42 USCS 2000e-5), in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Application of certain provisions. The provisions of section 706(f) through (k) (42 USCS 2000e-5(f)-(k)), as applicable, shall govern civil actions brought hereunder.

(e) Continuing responsibility of agencies and officials to assure nondiscrimination. Nothing contained in this Act (title) shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

(July 2, 1964, P.L. 88-352, Title VII, 717, as added Mar. 24, 1972, P.L. 92-261, 11, 86 Stat. 111).

Some provisions of regulations promulgated under Section 504 as amended to section 29 USCS 794 and 45 CFR Section 84.4 entitled "Discrimination prohibited"

a. General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

b. Discriminatory actions prohibited.

1. A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap;

- i. Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit or service;
- ii. Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit or service that is not equal to that afforded others;
- iii. Provide a qualified handicapped person with an aid, benefit or service that is not as effective as that provided to others;
- iv. Provide different or separate aid, benefits or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits or services that are as effective as those provided to others;
- v. Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization or person that discriminates on the basis of handicap in providing any aid, benefit or service to beneficiaries of the recipients program;
- vi. Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
- vii. Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving an aid, benefit or service.

. . .

(4) A recipient may not, directly or through contractual or other arrangement, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment

of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

STATUTE

Non discrimination under Federal grants and programs; promulgation of rules and regulations

No otherwise qualified handicapped individual in the United States, as defined in section 7(7) [29 USCS 706 (7)] shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on such regulation is so submitted to such committees.

2000e-16. Nondiscrimination in Federal Government employment

(a) Discrimination prohibited. All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, (5 USCS 102) in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, (5 USCS 105) United States Code (including employees and applicants

for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex or national origin.

(b) Role of Civil Service Commission; compliance of departments and agencies with rules and regulations. Except as otherwise provided in this subsection, the Civil Service Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall;

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups and organizations relating to equal employment opportunity.

The head of each such department, agency or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to —

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

2000e-5. Prevention of unlawful employment practices

(f) Civil Action by Commission, Attorney General, or person aggrieved. (1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of

any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleged was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation, that prompt judicial action is necessary to carry out the purposes of this Act (title), the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivi-

sion, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title (42 USCS 20003 et seq.). Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice and maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code (28 USCS 1404, 1406), the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his

absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; affirmative action; equitable relief. If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion, of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color,

religion, sex, or national origin in violation of section 704(a) (43 USCS 2000e-3(a)).

(h) Certain provisions inapplicable to actions against unlawful practices. The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes), approved March 23, 1982 (29 U.S.C. 101-115) (29 USCS 101 et seq.), shall not apply with respect to civil actions brought under this section.

(i) Proceedings to compel compliance with orders. In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals. Any civil action brought under this section and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code (28 USCS 1291, 1292).

(k) Attorney's fee. In any action or proceeding under this title (42 USCS 2000e et seq.), the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

(July 2, 1964, P.L. 88-352, Title VII, 706, 78 Stat. 259; March 24, 1982, P.L. 92-261, 4, 86 Stat. 104).

**(G.) CONCISE STATEMENT OF CASE CONTAINING
FACTS MATERIAL TO THE CONSIDERATION OF
THE QUESTIONS PRESENTED.**

Petitioner is a member of a certified class defined *supra*. Joseph Rohde, petitioner herein, filed the original case for relief as a disabled employee of the UNITED STATES POSTAL SERVICE. A second similar suit was filed. The two aforesaid suits were consolidated as a class action. Plaintiffs asked for injunction, back pay for breaching of federal employment protection laws, damages, costs and attorney fees.

A settlement agreement was arranged by all the attorneys involved but several of the class members objected to the proposed settlement and filed objections thereto. Petitioner Rohde, told his counsel he did not approve the terms of the agreement but his attorney felt it was best for the class in spite of what his client wanted.

So, Rohde was left without counsel & hired other counsel then to file his objections to the settlement agreement, which they did, and his former attorney withdrew from representing Rohde.

Petitioner Rohde objected to the settlement agreement in part because it did not make any provision for recovery of damages incurred because of wrongful violation of the applicable Federal labor protection statutes by the Defendant U.S. Postal Service and its employees and agents. Class members suffered personal injuries, incurred doctor and hospital bills, incurred pain and suffering and had existing physical problems made worse by said intentional wrongful acts of defendants in their employment practices violating said statutes cited *supra*.

Petitioner further objected to proposed settlement agreement because its terms are so vague that it cannot be understood by class members and it cannot be reasonably enforced for the same reason.

The District Court entered its conclusion of law stating class members would not be entitled to collect damages under the said statutes even if they prevailed in their lawsuit and that they could not collect punitive damages against the defendants under any theory of law they might prevail under (see page 17, Par. 25 of said conclusions in the Appendix hereto). These positions on the law petitioner believes are not correct and should not stand. Such judicial error constitutes a breach of discretion by the trial court. Petitioner submits the 7th Circuit was in error in not voiding the settlement agreement on this basis, and for all the reasons stated supra.

Petitioner believes the trial court abused its discretion in approving the terms of the settlement agreement for all the reasons stated above.

Petitioner further asserts that the settlement agreement approved should have included a finding of wrong doing on part of the defendants to prevent further wrong doing in the future. He further submits that light duty status class members should have had their 40 hour work week guaranteed in this agreement and this is not part of the settlement agreement as approved.

Petitioner, after the original suit was filed, and others in the class, were reassigned by defendants to start work at 2:00 in the morning and were often sent home an hour or two later so they were denied their 40 hour work week without just cause. Petitioner submits the 2:00 A.M. starting time was imposed on disabled class mem-

bers as a punishment for filing the instant lawsuit. He submits it was a punishment for the lawsuit and the evidence would have shown this to be the case if the case had gone to trial. Class members suffered severe emotional and physical damage from the disruption of their normal working hours, working days. They were often sent home after being at work an hour or so by being told there was "no work to do" when they knew such was not the case. These hours (being a punishment, were not normal working hours), so back pay should have determined at overtime rates, and not at the artificially agreed upon hourly rate in the settlement agreement. (See appendix) (SETTLEMENT AGREEMENT, P.8 & 9) Petitioner believes the trial court abused its discretion in approving an arbitrary pay rate for the back pay awards for the class. The 2:00 A.M. work shift was assigned to class members even though many of their doctors sent defendants letters, directing this not be done due to medical hardships it would cause their disabled patients. Since Defendants deprived class members of their daytime 40 hour workweek as a punishment and not for valid work purposes it should be deemed that hours started at 2:00 A.M. were overtime hours.

The trial court, in its conclusions of law, stated that no 40 hour work week could be GUARANTEED class members because this was not provided for in the "National Agreement" (See page 10, Par. 14 Conclusions of law in Appendix hereto.) This assumes that federal statutory law is superseded by a labor agreement. Petitioner Rohde submits this position is not a correct statement of the law and that it is, therefore, an abuse of discretion by the trial court; if not actually so, it technically is so. (See *Hambree v. Georgia Power*, 637 F2d 423.)

In "Hambree" the court considered the effect of a labor agreement. It was also a collective bargaining situation. The court, in Hambree, said the collective bargaining agreement;

"cannot deprive veteran of benefits which Congress has provided in Veteran's Reemployment Rights Act".

In this said case class members could have worked a 40 hour work week but were not allowed to do so as part of Defendants discrimination against the handicapped class members, in violation of the Rehabilitation Act's intent.

(I.) TRIAL COURT JURISDICTION was based on a suit under several federal statutes as above. The trial Court accepted the case as a class action as aforesaid. Statutes in this case are as follows;

1. 29 USC 501 & 505(a)(1) of The Rehabilitation Act of 1973, as amended, 29 USC 791 & 794a (a)(1)
2. 42 USC 2000e-16,
3. 42 USC 2000e-5(f)-(k)
4. 28 USC 1331.

(J.) REASONS COURT SHOULD ALLOW WRIT

1. There is a conflict in Federal appellate court opinion as to whether or not damages and/or punitive damages should be allowed a plaintiff suing under the statutes sued under in this case. The 8th Circuit Court of Appeals, in *Miener v. Missouri*, 673 F2d 979 found that damages for personal injuries incurred because of violations of the said statutes are allowable. The Court said:

“We indulge the presumption that a wrong must find a remedy, and in light of the inadequacy of administrative remedies conclude that damages are awardable under Section 504.”

The Court went on to say:

“... we hold only that damages are available under Sec. 504 as a necessary remedy for discrimination against an otherwise qualified handicapped individual.”

Part of this action is a Civil Rights violation. Further this court said:

“Moreover, the right to seek money damages for civil rights violation is an accepted factor of the American judicial system.”

Several trial level courts in the Federal system have followed this decision and its reasoning. The late decision in the case of *Hurry v. Jones*, 560 F Supp 500 (1983), US District Ct. in Rhode Island agreed with the *Miener* decision. In that case Plaintiff was found to have been denied services he was entitled to because of his handicap. The court awarded Plaintiff in the *Hurry* case damages for mental anguish & physical injuries. The *Hurry* court said:

"This court agrees with the 8th Circuit . . . Therefore, under Sec. 504 of the Rehabilitation Act, Plaintiff George Hurry is entitled to compensatory damages for his pain and suffering caused by the Defendants' discriminatory conduct."

Some other courts have taken this position. Some have followed the 7th Circuit position and not allowed damages. Petitioner submits the 8th Circuit position is the correct one. Other cases allowing damages are, in part, *Gregg v. Bd. of Education of Lawrence School District*, 535 F.Supp. 1333, 1339-40 (E.D.N.Y., 1982); *Patton v. Dumpson*, 498 F.Supp. 933, 937-39 (S.D.N.Y. 1980); *Poole v. South Plainfield Bd of Education*, 490 F.Supp. 948 (D.N.J. 1980); *Hutchings v. Erie City & County Library Bd. of Directors*, 516 F.Supp. 1265, 1268 (W.D.Pa. 1981)

The Supreme Court recognized the problem of damages in these cases covered by the Rehabilitation Act of 1973, as amended, and in the related Civil Rights Statutes in title 42 as aforesaid in the case of *Consolidated Rail Corp., Petitioner v. Lee Ann Le Strange Darrone* as reported in 52 LW 4301 decided Feb. 28, 1984.

The Consolidated Rail case aforesaid was filed under the same statutes involved in this case. The Court in Consolidated awarded Plaintiff his back pay but the footnotes to the case, in part, considered the issue of damages. *Note 9* states that

"A majority of the Court agreed that retroactive relief is available to private plaintiffs for all discrimination, whether intentional or unintentional, that is actionable under Title VI."

The note goes on to say that:

“Justices Marshall, Stevens, Brennan & Blackmun argued that both prospective and retroactive relief were fully available, Justice O’Conner agreed, “WHILE RESERVING JUDGMENT ON THE QUESTION WHETHER THERE IS A PRIVATE CAUSE OF ACTION FOR DAMAGES RELIEF UNDER TITLE VI.” (caps ours)

As to the question of Punitive damages, the 7th Circuit in the instant case did not comment on this matter in its opinion of Apr. 3, 1984 except to infer it was considered by the trial court and it was a matter or discretion whether or not to void the settlement agreement because it did not cover this issue or the damage issue itself, yet the 7th Circuit itself, in *In re General Motors Corp. Engine Interchange*, a class action case, 594 F2d 1106 stated:

“We do not believe, as GM does, that punitive damages are never recoverable under Federal law unless expressly authorized. Punitive damages may be awarded . . . when breach (of contract) amounts to an independent tort or is accompanied by fraudulent conduct.”

The 7th Circuit in our case did not deem it necessary to comment on damages at all but, in effect, denied them out of hand, yet, in the GM case decided by this Circuit, the Court said: (re class action situation) “We do believe, however, that the possibility of such a recovery is not insubstantial in that this possibility as well as the possible compensatory damages were given insufficient weight by the trial court in the calculus of the fairness of the settlement.” Yet, in our case, the trial court mere-

ly, wrongly, concluded no damages of any kind were available and therefore didn't consider them at all, much less not giving them "sufficient weight in calculus of the fairness of the settlement."

2. VAGUENESS

The Illinois Supreme Ct., in the case of *O'Leary v. Allphin*, 2 Ill. Dec. 324 considered what terms in a statute were too vague to be understood by the Appellate Court (much less a class consisting of disabled postal employees). The Ill. Supreme Ct. said the Illinois Appellate Court misinterpreted the terms "own use" and the meaning of the word "transporter" and the phrase "any person". It is submitted that Illinois law has set a low standard as to what is vague and not subject to reasonable understanding, but it is the standard set by the highest court in this state. Surely the trial court, with affirmation by the 7th pa Circuit in this settlement agreement ought to have found the tortuous language in this case harder to correctly interpret by the class of plaintiffs herein. The words complained of in this case (see pages 3 & 4 of the Settlement Agreement in the appendix to this Writ) such as "reasonable accommodation"; "undue hardship"; "readily accessible"; ". . . appropriate adjustment or modification of examinations and other similar actions"; "other similar actions"; "the maximum extent practical"; "to the extent possible"; "to the maximum extent practical". The 7th Circuit's muteness on the vagueness issue and affirming a settlement agreement where postal employees are required to accurately interpret their rights described by aforesaid phrases are a direct contradiction of the standards set forth in the *O'Leary* case as to vagueness. The 7th Circuit, in "*In re General Motors*",

in discussing a settlement agreement term regarding attorney's fees said:

"We think the proposed settlement's estimate of attorneys' fees and expenses is so vague that subclass members could not determine the possible influence of attorneys' fees on the settlement in considering whether to object to it"

The formula the 7th Circuit found too vague was:

". . . in an amount greater than the amount of documented time actually expended . . . multiplied by the hourly fee prevailing . . . in the community".

It is submitted if the above examples of language are "too vague" then the wording of the instant settlement agreement must be held, according to Illinois & 7th Circuit standard as to vagueness, to be fatally vague.

3. The court did not comment on whether the back pay awarded to class plaintiffs in the settlement agreement, should have been based on Overtime rates as alleged by petitioner, and therefore affirmed an arbitrary pay rate not based on reality. This ignores a federal regulation, to wit: 3 FRES 21-44. This regulation is entitled *SUFFERING OR PERMITTING EMPLOYEE TO WORK OUTSIDE REGULAR WORKING TIME*. It states:

"Where an employee works or continues to work after regular office hours, with the employer's knowledge, the employer is considered to have suffered or permitted the employee to work during these periods. Duties performed by an employee before and after scheduled hours, even if not requested, are suffered or permitted if the employer knows or has reason to believe that the employee is continuing to work,

and the duties performed are an integral and indispensable part of the employee's principal work activity."

Plaintiff-petitioner has alleged the class members being reassigned work duties at 2:00 A.M., after initiating their suit herein, was not a regular shift move, but a punishment, as their doctors recommended strongly against it to Defendants for medical reasons, all these persons being handicapped and not able to protect themselves or their physical or mental conditions via the added rigors caused by starting work at 2:00 A.M. at night and being sent home an hour later, in the middle of the night, unprotected, being falsely told there was no more work to do.

We submit this time so worked, under the circumstances, should be deemed to be overtime as class members were wrongfully denied their normal daytime working hours without just cause.

Overtime pay for such work should be the basis for a back-pay award ordered for class plaintiffs from Defendants as herein. See *Steiner v. Mitchell*, 350 US 247 holding these as work hours. And this principle is also recognized by regulation; see reg. 29 CFR 785.11 THE 7th CIRCUIT ignored these authorities and accepted the Defendant's specious argument that they had a regular 2:00 A.M. work shift, and assigning handicapped employees to this shift during the course of this litigation was simply a normal work shift procedure, and not a punishment. Petitioner heartily disagrees, but was never given an opportunity to prove his case. The National Agreement calls for overtime pay for work done outside the regular scheduled work week at request of the Em-

ployer. In 4 *FRES Sec. 29.1* the Purpose for Overtime Rules appears. It states:

“ . . . Congress believed that excessive working hours were injurious to employee's mental, emotional and physical health.”

It is submitted that the nighttime shift for handicapped workers who were under doctor's orders not to work such hours due to injurious health consequences are covered by this reasoning. The National Agreement, Article 8, Sec 4.B. in Appendix hereto requires overtime pay for work done outside regular work week at employer's request.

CONCLUSION:

1. The Writ should be granted to clarify the law as to whether or not Damages punitive and/or actual, for personal injuries and related damages are recoverable by Title VI & Title VII Pls. under actions filed under The Rehabilitation Act of 1973, 29 USC 501 & 505(a)(1) as amended, 29 USC 791 & 794a(a)(1), 42 USC 2000e-16, 42 USC 2000e-pa 5(f)-(k), and 28 USC Sec. 1331.

2. The Writ should be granted to settle the difference between Illinois law as decided by the Ill. Supreme Ct. on what standard test is as to unreasonably vague language. The 7th Circuit's standard is much higher as language they found reasonable in settlement agreement herein is vague and not subject to proper interpretation by members of a class such as Petitioner's class in this case.

3. The Writ should be granted to settle a difference between the Supreme Court and Federal regulations and the 7th Circuit in this case on what circumstances will

be considered harsh enough to require the court to look into the question of whether employees were in fact forced to work in an overtime pay condition based on being assigned to unusual hours as a punishment for filing a law suit against their federal employer under proper federal statutes. (In this case disabled employees were reassigned from their normal work hours during the daytime to start work at 2:00 A.M. against their doctor's orders.) This should be considered as overtime pay and that pay rate should have been used in determining rate of pay for back-pay awarded to class members, not an arbitrary figure not based on overtime pay scales, as was used in the settlement agreement in this case.

WHEREFORE: Petitioner prays this Hon. Court grant this request for Writ of Certiorari.

Respectfully submitted,

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Chicago, Ill. 60645
312-764-3421
Attorneys for Petitioner

JAY CONTORER &
KENNETH K. DITKOWSKY,
Of Counsel

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APPENDIX

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

(Submitted March 23, 1984)*

April 3, 1984.

Before

HON. WILBUR F. PELL, JR., *Circuit Judge*

HON. JESSE E. ESCHBACH, *Circuit Judge*

HON. JOEL M. FLAUM, *Circuit Judge*

* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Rule 34(a), Fed. R. App. P.; Circuit Rule 14(f). Plaintiff-appellant has filed such a statement and requested oral argument. Upon consideration of that statement, the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

JOSEPH S. ROHDE,

Plaintiff-Appellant,

vs.

WILLIAM F. BOLGER, Postmaster General, UNITED
STATES POSTAL SERVICE, et al.,

Defendants-Appellees.

No. 83-3174

JAMES McDONALD, et al.,

Plaintiffs-Appellees,

vs.

WILLIAM F. BOLGER, Postmaster General, UNITED
STATES POSTAL SERVICE, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.

Nos. 79 C 1636, 80 C 4991

GEORGE N. LEIGHTON, *Judge.*

ORDER

Class member and named plaintiff Joseph Rohde seeks review of a settlement agreement approved by the district court in a class action suit brought pursuant to the Rehabilitation Act of 1973, 29 U.S.C. § 791 *et seq.* Plaintiff argues that the district court abused its discretion in approving and entering the settlement of the parties because the agreement (1) contained unenforceably vague terms; (2) failed to compensate class members for physical and mental sufferings; (3) failed to compensate class members at the overtime hourly rate for past work performed at other than normal times; (4) failed to guarantee overtime wages for future work performed at other than normal hours and (5) failed to guarantee class members a 40 hour work week.

A court of appeals can upset a district court's approval of a class action settlement only upon a showing

of an abuse of discretion. *Gautreaux v. Pierce*, 690 F.2d 616 (7th Cir. 1982); *Airline Stewards, etc. v. T.W.A.*, 630 F.2d 1164 (7th Cir. 1980); *Armstrong v. Board of Directors of the City of Milwaukee*, 616 F.2d 305 (7th Cir. 1980). District court approval of a settlement pursuant to Federal Rule of Civil Procedure 23(e) "may be given only when the district court finds the settlement fair, reasonable, and adequate." *Gautreaux* at 631. Fairness must be evaluated in the context of the entire agreement without undue emphasis on individual components. *Armstrong* at 315. The record indicates that all negotiations were open, full and complete. *Gautreaux* at 629-30. The agreement was drafted by four counsel for class plaintiffs and four counsel and additional advisory personnel representing defendant Post Office. Negotiations stretched over six weeks and consumed over 100 hours of time. The district judge carefully monitored the evolution of the case over a four-year period. Members of the class were apprised on at least three occasions of the developing agreement, and in each case the consultations resulted in further modifications to the version of the agreement on the table at the time. To the extent plaintiff raised his concerns below, they were considered and rejected by the district court. We conclude from a review of the record that the ultimate rejection by the court of these concerns did not constitute an abuse of discretion. Accordingly, the order of the district court is

AFFIRMED.

Unpublished Per Curiam Order
JUDGMENT—WITHOUT ORAL ARGUMENT
UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
April 3, 1984.

Before

Hon. WILBUR F. PELL, JR., *Circuit Judge*
Hon. JESSE E. ESCHBACH, *Circuit Judge*
Hon. JOEL M. FLAUM, *Circuit Judge*

No. 83-3174

JOSEPH S. ROHDE,

Plaintiff-Appellant,

vs.

WILLIAM F. BOLGER, Postmaster General, United
States Postal Service, et al.,

Defendants-Appellees.

JAMES MCDONALD, et al.,

Plaintiffs-Appellees,

vs.

WILLIAM F. BOLGER, Postmaster General, United
States Postal Service, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.

Nos. 79 C 1636, 80 C 4491

Judge GEORGE N. LEIGHTON

This cause came before the Court for decision on the
record from the United States District Court for the
Northern District of Illinois, Eastern Division.

On consideration whereof, IT IS ORDERED AND AD-
JUDGED by this Court that the judgment of the said
District Court in this cause appealed from be, and the
same is hereby, AFFIRMED, with costs, in accordance
with the order of this Court entered this date.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 79 C 1636

No. 80 C 4991

JOSEPH S. ROHDE,

Plaintiff,

vs.

WILLIAM F. BOLGER, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE, ET AL.,

Defendants.

JAMES McDONALD, ET AL.,

Plaintiffs,

vs.

WILLIAM F. BOLGER, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE, ET AL.,

Defendants.

SETTLEMENT AGREEMENT

Whereas, it is the intent of the Chicago Post Office to integrate disabled employees into the general work force to the extent possible, in accordance with but not in conflict with the Rehabilitation Act of 1973, as amended, and the 1981-1984 National Agreement and the local memoranda of understanding, the parties, by their respective undersigned attorneys, hereby settle these civil actions as set forth below, contingent only upon the Court's approval of said Agreement.

Definitions

For the purposes of this Settlement Agreement the following definitions shall apply:

Limited duty employees—those employees who the Postal Service is obligated to pay continuation of

pay or workers' compensation as a result of an on-the-job injury.

Light duty employees—Those employees who are assigned to light duty positions as designated by the National Agreement and the local memorandums of understanding.

Reasonable Accomodation—Reasonable accomodation shall mean that the Chicago Post Office will make accomodation to the known physical or mental limitations of an employee consistent with the terms and conditions of the collective bargaining agreements in effect at the date of this Agreement, unless the Chicago Post Office can demonstrate that the accomodation would impose an undue hardship on its operation. Reasonable accomodation may include, but shall not be limited to:

- (1) making facilities readily accessible to and usable by handicapped persons; and

- (2) job restructuring of the individual job in a unit (including but not limited to elimination or reduction of requirements of lifting or extended standing where such functions are not essential to the position or redistribution of such functions to able bodied employees in in the unit), part-time or modified work schedules, acquisitions or modification of equipment or devices (including but not limited to redesigning of cases and chairs to enable disabled employees to distribute mail), appropriate adjustment or modification of examinations, and other similar actions.

Permanent disability—Permanent disability shall mean any injury or impairment for which either (a) the prognosis of disability or (b) the duration of actual disability is one year or more from the first date of the injury or impairment.

1. To the maximum extent practical, full-time regular employees with temporary disabilities will be permitted to perform in their preferred duty assignments (i.e., within their craft and unit, on their tours of duty, and in accordance with the non-scheduled days and starting times of their preferred duty assignments). Preferred duty assignment as used throughout this agreement means any assignment considered preferred by a full-time regular employee.

2. To the extent possible with reasonable accommodation, full-time regular employees with permanent disabilities will be permitted to perform in their preferred duty assignments (i.e., within their craft and unit, on their tours of duty, and in accordance with the non-scheduled days and starting times of their preferred duty assignments).

3. To the extent practical, disabled part-time flexible schedule employees will be reasonably accommodated in normal craft duties.

4. A disabled employee may apply for temporary light duty pursuant to Article 13-A of the applicable national collective bargaining agreement or for permanent light duty status pursuant to Article 13-B of the applicable national collective bargaining agreement.

5. Limited and light duty employees may be assigned to temporarily vacant positions.

6. Limited and light duty employees will be provided with the fullest working day possible with reasonable accommodation. Limited and light duty employees will not be moved out of light duty work assignments as defined by the applicable collective bargaining agreements and sent home to enable non-disabled employees to perform said light duty assignments (other than those non-disabled employees performing in an existing preferred duty assignment in that light duty area). Except when exigent business conditions dictate, e.g. to

meet a dispatch or delivery schedules, etc., non-disabled employees shall not be moved into a light duty area from another area. To the maximum extent practical, disabled employees who cannot perform in their preferred duty assignments with or without reasonable accommodation will be assigned to light duty assignments on the same tour of duty with the same non-scheduled days and starting times as applied to their original preferred duty assignment. Limited and light duty employees may be shifted to other work areas if tasks have been completed in their light duty assignments. If there is not enough work available in the light duty assignments, limited duty employees may be assigned the available work.

7. Full-time regular employees will be allowed to bid for any position within their craft, and will be awarded the bid, provided they are the senior or best qualified bidder, and further, that they can perform the essential functions of the position with reasonable accomodation. If an employee who is on light duty is the successful senior qualified or best qualified bidder and is awarded the position, and within a 10 day period from when the employee is placed in the position, it is determined that the employee cannot, in actuality, meet the physical requirements of the position, he will be assigned to a light duty assignment.

8. Any full-time regular employee who is on light or limited duty as of the date of this Agreement and who, if reasonable accomodation could have been provided, could have performed the essential functions of his previous perferred duty assignment, and no longer has that preferred duty assignment due to the failure of the Chicago Post Office to accommodate his disability, shall be entitled to one of the following, at the option of the Chicago Post Office:

a. An assignment to an additional position of the type and in the principal assignment area for which

he would have qualified with reasonable accomoda-

b. A priority over all other employees to a currently available position, or if none is currently available, to the next available position, of the type and in the principal assignment area for which he would have qualified with reasonable accommodation. If no position becomes available within eighteen months, option (a) above will be implemented. This subparagraph shall not apply to employees who are successful bidders during this eighteen month period. tion; or

9. Any full-time regular employee who is on light or limited duty as of the date of this Agreement and who, if reasonable accommodation could have been provided, could have performed the essential functions of a bid assignment that was posted, and was not the successful bidder or did not bid upon that assignment due to the failure of the Chicago Post Office to accommodate his disability, and within thirty (30) days of receiving notice of the Court's approval of this Settlement Agreement, shall designate two postings since 1980 that he did or would have bid upon. The Chicago Post Office will then reconstruct the award of that posting and if the employee would have been the senior qualified bidder, the employee shall be entitled to one of the following at the option of the Chicago Post Office:

. An assignment to an additional vacant position of the type and in the principal assignment area of the posting for which he would have qualified with reasonable accommodation; or

b. A priority over all other employees to a currently available position, or if none is currently available, to the next available position, of the type and in the principal assignment area of the posting for which he would have qualified with reasonable accommodation. If no position becomes available with-

in eighteen months, option (a) above will be implemented. This subparagraph shall not apply to employees who are successful bidders during this eighteen month period.

10. There shall be a person designated in the Chicago Post Office who shall be responsible for administering the policy of accomodation provided under this Agreement. This person shall become acquainted with the various methods, means, and services for accomodating Chicago Post Office employees and determine or participate in the determination of whether or not an individual can be accomodated and the method of such accomodation. Proper access to and use of medical personnel and personnel trained in ergonomics as well as use of governmental and service agencies dealing with accomodation of the handicapped, will be established.

11. Limited and light duty employees shall participate on the same basis as non-disabled employees in any training program sponsored by the Chicago Post Office or in which the Chicago Post Office participates, provided such employees can perform the essential elements of the job for which such training is being provided, with or without reasonable accomodations.

12. (a) The Chicago Post Office will compensate employees who have been assigned to a designated light duty area for a continuous period in excess of 365 days as a result of the same injury or illness, for each hour of Leave Without Pay (LWOP) experienced during that light duty period, up to the claimant's pro rata share of a sum of \$300,000, the maximum principal amount to be paid by the Chicago Post Office for all claims. "Continuous period" as used in this paragraph may include one break in the light duty assignment of up to 30 days. Claimants shall not receive payment in excess of their total allowed claim and all monies not distributed from

the fund will be retained by the Chicago Post Office. "LWOP" as used in this Agreement also includes non-scheduled hours that were used in lieu of LWOP hours and annual leave hours used in lieu of LWOP hours where records exist showing that such annual leave hours were taken because there was insufficient work available.

(b) Claimants may claim LWOP hours for which they were ready, willing and able to work (with or without reasonable accomodation) during the period described above; LWOP hours will not be allowed for any hours that the claimant was unavailable to work, e.g. due to physical inability to work light duty, disciplinary actions, use of LWOP in lieu of sick or annual leave, hours that were not part of the employee's commitment to work (such as in the Chicago Post Office part-time flexible old "short-hours sub" category etc. No LWOP hours may be claimed that were or will be compensated by the Department of Labor, Office of Workers' Compensation. In addition, all unemployment compensation benefits received during the period claimed, shall be deducted from the compensation to be received by the claimant. LWOP hours shall be compensated at the following rates:

Pay Level 4 — \$9.04 per hour

Pay Level 5 — \$9.08 per hour

Pay Level 5 — \$9.42 per hour

13. (a) The Chicago Post Office will credit the annual and sick leave balances of employees who have been assigned to a designated light duty area for a continuous period in excess of 212 days as a result of the same injury or illness, for each hour of LWOP experienced during that light duty period based upon the formula established below. "Continuous period" as used in this paragraph may include one break in light duty assignments up to 30 days.

(b) Claimants may claim LWOP hours for which they were ready, willing and able to work (with or without reasonable accomodation) during the light duty period described above; LWOP hours will not be allowed for any hours that the claimant was unavailable to work, e.g. due to physical inability to work light duty, disciplinary actions, use of LWOP in lieu of sick or annual leave, hours that were not part of the employee's commitment to work (such as in the Chicago Post Office part-time flexible old "short-hour sub" category) etc. Further, no LWOP hours may be claimed for which annual and/or sick leave hours were credited. For every 20 hours of LWOP, the claimant shall be credited with one hour of sick leave, and either one, one and one-half or, two hours of annual leave, depending upon the claimant's annual leave category.

14. Upon signing this Settlement Agreement the parties shall petition the court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure to hold a fairness hearing, and in conjunction therewith, the attached "settlement notice to class members" shall be sent to the last known addresses of all possible claimants and posted on all Chicago Post Office employee bulletin boards.

15. Within fourteen (14) days of approval of this Settlement Agreement by the court, the Chicago Post Office shall post a "notice to file claim", a copy attached hereto, on all Chicago Post Office employee bulletin boards. Within seven (7) days of the posting of the "notice to file claim", the Chicago Post Office shall make personal delivery of or send certified mail a copy of the "notice to file claim" to all possible claimants. A copy of the list of possible claimants will be forwarded to plaintiffs' attorneys.

16. After the court has approved this Settlement Agreement and within the sixty (60) day period after

the date on which the "notice to file claim" is posted, each claimant must file his or her claim on the form attached hereto. All claims of periods of light duty and LWOP hours must be verified by Chicago Post Office records, including, but not limited to, light duty rosters, medical unit files, leave records and pay records. The Chicago Post Office shall verify and authorize payment of each claim in the most expeditious manner possible.

17. In the event that the Chicago Post Office disputes any portion of any claim, the Chicago Post Office will notify the claimant and plaintiffs' attorneys within thirty (30) days of the end of the claim period. If the Chicago Post Office disputes the claim, the disputed matters will be presented as soon as possible for expedited arbitration as follows:

- (a) an informal hearing shall be provided;
- (b) no briefs shall be filed or transcripts made;
- (c) there shall be no formal rules of evidence;
- (d) the hearing shall normally be completed within one day;
- (e) the arbitrator may issue a bench decision at the hearing but in any event shall render a decision within forty-eight (48) hours after conclusion of the hearing. Such decision shall be based on the record before the arbitrator and may include a brief written explanation of the basis for such conclusion. The arbitrator's decision shall be final and binding and not subject to court review. An arbitrator who issues a bench decision shall furnish a written copy of the award to the parties within forty-eight (48) hours of the close of the hearing.

The arbitration shall be limited to determining the number of LWOP hours that qualify for payment or credit pursuant to paragraphs 12 and 13. Arbitrators

shall be selected at random from a list supplied by the Postal Service's Regional Arbitration Branch. The arbitrators will be from the list that has been established by the Postal Service and the Postal Service's unions, but the available dates of such arbitrators shall be those in excess of the dates committed to arbitrations pursuant to the collective bargaining agreements. The maximum amount to be paid an arbitrator shall be one hearing date at \$400.00 per day and one study day at \$400.00 per day, if needed. The Chicago Post Office will pay the arbitrator's fees.

18. Each claim for pay or leave hours will be paid or credited by the Chicago Post Office within thirty (30) days of determination of the full amount to be paid or credited on that claim except that undisputed portions of claims for leave shall be credited within thirty (30) days of the end of the claim period, and undisputed portions of claims for pay shall be paid within thirty (30) days of such time that the total outstanding claims for pay do not exceed \$300,000.

19. As of the date that this Court signs an order approving this settlement agreement, the above-captioned case shall be dismissed with leave to reinstate within six (6) months for the limited purpose of filing a motion for enforcement of the settlement agreement. If no such motion is filed within said six (6) month period, an order or dismissal with prejudice shall be entered by this Court.

20. By entering into this Settlement Agreement neither the Chicago Post Office, the Postal Service, nor any of its employees, supervisors, or managers admit to liability or fault or to the violation of any federal statute or federal regulation.

21. This is in full settlement and satisfaction of any and all claims and demands of the class that relate to this civil action.

22. The Postal Service will report to Office of Personnel Management the total number of hours and pay allowed for each claimant under paragraphs 12 or 13 by each year for which the LWOP hours were recorded.

Attorneys for Plaintiffs:	Attorneys for Defendants:
/s/ Gordon V. Levine Gordon V. Levine 5/4/83 date	Dan K. Webb United States Attorney
/s/ Gregory D. Friedman Gregory D. Friedman 5/4/83 date	/s/ Mary S. Rigdon, Mary S. Rigdon, Assistant United States Attorney 5/2/83 date
/s/ Andrew Schatz Andrew Schatz 5/4/83 date	/s/ James P. White, James P. White, Assistant United States Attorney 5/2/83 date
/s/ Harry Golter Harry Golter 5/4/83 date	/s/ Dorothy Lupton Moran Dorothy Lupton Moran Assistant Regional Labor Counsel United States Postal Service 5/2/83 date

/s/ Gregg R. Sackrider,
Gregg R. Sackrider,
Senior Assistant
Regional Labor
Counsel
United States
Postal Service

5/2/83
date

/s/ Jimmie Mason,
Jimmie Mason,
Director Employee &
Labor Relations
Chicago Post Office

5/2/83
date

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 79 C 1636

JOHN S. ROHDE, et al.,

Plaintiffs,

vs.

WILLIAM F. BOLGER, Postmaster General UNITED STATES
POSTAL SERVICE, et al.,

Defendants.

No. 80 C 4491

JAMES McDONALD, et al.,

Plaintiffs,

vs.

WILLIAM F. BOLGER, Postmaster General UNITED STATES
POSTAL SERVICE, et al.,

Defendants.

Before the Honorable GEORGE N. LEIGHTON
United States District Judge

Findings and Conclusions

I. Introduction

In this proceeding to determine whether the proposed Consent Decree should be given final approval, the Court makes the following Findings of Fact and reaches the following Conclusions of Law.

II. Findings of Fact

1. *Rohde v. Bolger*, 79 C 1636, was initially filed on April 23, 1979, and *McDonald v. Bolger*, 80 C 4991, on September 17, 1980. Both cases alleged the jurisdiction of the Court under the provisions of the Rehabilitation Act of 1973, as amended in 1978, 29 U.S.C. § 791 *et seq.*, and alleged discrimination in the workplace against cer-

tain handicapped employees by the Chicago Post Office. Rohde is the sole plaintiff in the *Rohde* case. There are 25 plaintiffs in the *McDonald* case. Both cases contained class action allegations and sought injunctive relief and damages.

2. On August 10, 1981, both cases were consolidated for all purposes by this Court.

3. On March 23, 1983, this Court entered an order of class certification defining the class as:

All persons who were qualified handicapped employees of the United States Postal Service (as defined by the Rehabilitation Act of 1973 as amended in 1978, 29 U.S.C. § 791 *et seq.*, and interpretations thereof) and assigned to light duty, limited duty, or rehab limited duty in the Chicago Post Office at any time during the period May 17, 1978, to the present, and who, with or without reasonable accommodation, could perform the essential functions of their position in the Chicago Post Office. (Exhibit A).

4. After class certification, active negotiations ensued between the attorneys for plaintiffs and defendants to explore settlement of the issues common to the class. The attorneys for the Plaintiffs held several meetings with class representatives to guide the attorneys in the areas of concern and to determine what type of relief might be appropriate.

5. A Settlement Agreement was signed on behalf of the defendants by attorneys for the Postal Service and the United States Attorney's Office, as well as by the Director of Employee and Labor Relations of the Chicago Post Office on May 2, 1983, and by attorneys for the plaintiff class (Attorneys Friedman, Golter, and Schatz) and for Mr. Rohde (Attorney Levine) on May 4, 1983. (Exhibit B).

6. On May 10, 1983, after reviewing the Settlement Agreement in the light of the allegations of the complaint, this Court made a finding that the agreement was reasonable and within the range of possible settlements and gave preliminary approval to the agreement. The Clerk of the United States District Court for the Northern District of Illinois was directed to execute and enter the Notice of Proposed Class Action Settlement; that action was taken on May 10, 1983. (Exhibit C).

7. On May 13, 1983, written notice (Exhibit D) was sent to more than 450 persons listed on the light duty roster of the Chicago Postal Service during the relevant period. That same notice was posted on all Chicago Post Office employee bulletin boards that same week and remained on the bulletin boards through July 13, 1983.

8. The Notice of Proposed Class Action Settlement provided that written objections to the class action settlement, as well as detailed written requests to speak at the hearing on Settlement set for June 17, 1983, were required to be filed with the Clerk of the District Court on or before June 6, 1983.

9. In all, sixteen written comments have been received by the Clerk's office (not all were timely filed). Two of these comments were favorable and urged approval of the settlement (Blanton and Gates). One individual (Mason) requested an opportunity to speak, but did not comply with the requirement that the substance of her position be submitted to the Court; this request filed on June 7, 1983, was also untimely. Three persons requested clarification of their inclusion in the settlement (Daniel, Palmer, and Roberts). The other ten written comments contained specific objections; four of these objectors are named plaintiffs in the action (Rohde, Elcan, Roy, and McDonald) and the other six are potential class members (Powell, Fondren, Mosley, Moore, LeFlore, and Williams). (Exhibit E).

The objections of these ten persons can be summarized as follows:

(1). 40 hours of work per week should be guaranteed to handicapped employees (3 persons);

(2). \$300,000 is not an adequate sum for the damages fund (3 persons);

(3). payment for medical costs, infliction of emotional distress and damages for aggravation of injuries should be included (4 persons);

(4). compensation should be paid for time lost due to injury or illness (1 person);

(5). disciplinary time was due to failure to accommodate and should be compensated (1 person);

(6). agreement is too vague and unenforceable and Post Office will not comply (3 persons);

(7). no finding of liability is made against Post Office (2 persons);

(8). no punitive damages are assessed against Post Office personnel (1 person);

(9). eligibility to participate in retroactive relief for back pay and leave credit based upon 365 days and 212 days of continuous light day status is too long. (1 person).

Each of these objections will be dealt with in relation to the appropriate provisions of the Settlement Agreement.

10. In addition to these comments by class members, the Court received written "objections" to the proposed settlement agreement from Local 11 of the National Association of Letter Carriers. The Chicago Local and the National Union of the American Postal Workers Union also commented on Paragraphs 8 and 9 of the Settlement Agreement; neither the local branches, nor the national unions of either of these two unions was

a party to these actions or participated in the settlement discussions. At the hearing on July 1, 1983, all Union representatives stated in open court that, in general, they approved the Settlement and did not wish to upset it; they characterized their position as a "caveat." Their comments will be addressed in the following detailed discussion of the Settlement Agreement.

11. Paragraphs 1, 2, and 3 of the Settlement Agreement provide that the Post Office will make an effort to accommodate disabled employees in their regular assignments. Paragraphs 1 and 2 of the Settlement Agreement detail the extent to which the Postal Service will permit full-time regular employees with both temporary and permanent disabilities to perform their preferred duty assignments. Paragraph 3 brings disabled part-time flexible employees within the ambit of the accommodations made for disabilities in their craft duties. These paragraphs clearly establish the extent to which employees with disabilities will be accommodated within their regular assignments in accordance with the Rehabilitation Act. Plaintiff McDonald's objection that handicapped persons should not remain in their preferred duty assignments is clearly inconsistent with the mandate of the Rehabilitation Act, and is, therefore, entitled to no weight.

12. Several objectors, including plaintiff Rohde, have complained that the phrases "reasonable accommodation," "to the extent possible," and "to the extent practical," as used in the Settlement Agreement are too vague and unenforceable. The Court finds that the definition of "reasonable accommodation" in the Settlement Agreement (pages 2 and 3) closely follows the statutory definition in Section 502 of the Rehabilitation Act. The phrases "to the extent possible" and "to the extent practical" are drafted to cover general situations, since not every contingency can be detailed in a broad scope agreement. They are most suitable for the Settlement Agreement

which is designed to apply to all present and future handicapped employees of the Chicago Post Office. Therefore, the Court finds that the intent of the Agreement is clear.

13. Paragraph 4 spells out the method by which an employee may seek temporary or permanent light duty status under the terms of the collective bargaining agreements, and is, thus, merely a reiteration of previously established postal policy.

14. Paragraphs 5 and 6 set out some of the specific ways in which the Post Office will adjust duty locations in order to provide disabled employees with the fullest possible working day. This is an important commitment by the Chicago Post Office to plan their daily use of available personnel in light of the business needs of the Post Office, so that disabled employees will be able to be more productive workers. These provisions will benefit not only the workers, but should aid in more efficient deployment of manpower. Three other persons object to the fact that these provisions do not guarantee 40 hours of work per week to those working on light duty assignments. Light duty is a category established under the provisions of the collective bargaining agreements, i.e. National Agreements, to provide disabled employees who cannot perform the essential functions of their preferred duty assignments with an alternative working opportunity. However, the provisions of the National Agreement preclude such a guarantee of 40 hours of work per week under the bargained-for-light-duty specifications. But the Settlement Agreement does maximize the possibilities for a full day's employment for light duty employees. The Court finds that this provision is fair to the class members and provides as much relief to the class members on light or limited duty regarding their hours of work as they would like to achieve if they prevailed on the merits at trial.

15. Paragraphs 7, 8, and 9 concern procedures to clarify the opportunities for bidding on assignments for which disabled employees would be qualified. Paragraph 7 spells out prospective relief in bidding situations; it provides that persons on light duty will be entitled to bid for new assignments on the same basis as all other postal employees. It is correlated with paragraphs 1 and 3 of the Settlement Agreement. There was no adverse comment on these provisions.

16. Paragraphs 8 and 9 concern retroactive relief for persons now on light duty at the Chicago Post Office. Paragraph 8 provides for possibilities for retroactive relief to employees who lost their preferred duty assignments because they were on light duty. Paragraph 9 sets out some possible procedures for re-evaluation of bidding opportunities which disabled employees may have been denied. Paragraphs 8 and 9 apply only to a limited and, as yet undetermined number of class members who remain on light duty as of the date of the Court's final approval of the settlement and submit the proper claims.

Union representatives have commented that these two paragraphs may impinge on previously negotiated collective bargaining seniority rights, but the Court finds that any such predictions are merely speculative at this point. Moreover, since the express terms of the Settlement Agreement state that it shall be "... in accordance with, but not in conflict with, the ... National Agreement ...", these provisions should not be construed as facially violative of the National Agreements. Since the paragraphs are designed to provide relief to employees whose seniority rights were arguably violated, the unions might decide not to dispute such relief in individual circumstances. And even if such disputes arose, the arbitration provisions of the collective bargaining agreements outline the procedure for resolution of such problems. Therefore, while the concerns of the union may be recognized, they should not impede the implementation of the Settlement Agreement.

17. Paragraphs 10 and 11 set out provisions for the appointment of a coordinator to administer the policies for accommodation of the handicapped and for offering participation by handicapped employees in training programs available to the able-bodied. Even before this Agreement was signed by the parties, this specially trained Handicapped Coordinator was on the job at the Main Post Office, reviewing possible accommodations, planning training for management personnel, and working in recruiting. In addition, work areas which may be modified are already being identified, and chairs with special supports and redesigned mail cases already have been ordered. (Exhibit F).

18. Paragraph 12 sets up the conditions for entitlement to the \$300,000 fund for compensation and back pay by each of the qualifying class members. The threshold requirement of 365 days or longer in a designated light duty status is reasonable in view of the fact that other government injury compensation regulations contain a similar one-year qualification period (e.g., 42 U.S.C. § 423), and that the statutes and regulations defining handicapped status require that the injury be permanent and have an impact on a major life activity. The \$300,000 fund which will be shared proportionately according to the claims filed by the class substantiating their hours of Leave Without Pay status is opposed as too low by three objectors, and one person questions the rate at which the reimbursement rates will be calculated. However, these reimbursement rates were accurately compiled by recording the hourly rates for each class of postal worker for the period from May, 1978 to the present.

To calculate the rate for each individual claimant for the period would be cumbersome and costly as it would require a check of each claimant's individual pay scale for each part of the period for which a claim was viable. Under the circumstances, the Court finds the averaging

method is fair and reasonable in a settlement procedure. And the fund of \$300,000 is a compromise figure which will make available to qualified class members a proportionate recovery for previously uncompensated hours when they were not working. The claim procedure established for verifying entitlements to this fund is fair and prompt in the method of determination which has been devised.

19. Paragraph 13 provides further benefits by crediting annual and sick leave balances with additional leave based on Leave Without Pay hours during the five-year period for those class members who meet a 212 day threshold qualification requirement, in the light duty status. In view of the fact that authorization of light duty status is routinely granted in 30-day increments for periods between 90 and 180 days, this 212 day qualification requirement is a reasonable compromise, despite the expressed objections of some class members that occupying light duty status for even one day should be fully compensated. Because class members who were disciplined for LWOP time had previous opportunities to contest these under the collective bargaining agreements, the Court finds that deducting such time is fair and reasonable.

20. Paragraph 14 which establishes the notification of the class of the preliminary approval of the Settlement Agreement and for a fairness hearing has already been promptly carried out.

21. Paragraphs 15 and 16 set out the procedures for verifying claims under the settlement agreement, and the 74 day time period for filing of claims. This is an admirably prompt procedure and will allow for reimbursement to occur within a relatively brief period of time.

22. The prompt payment provisions which reinforce these procedures are spelled out in Paragraph 18. The serious intention of the parties to resolve these claims

expeditiously is also evidenced by the 30 day requirement for notification of the claimant by the Chicago Post Office of any dispute concerning the claim which is contained in Paragraph 17. An expedited arbitration procedure is explicitly delineated with the Postal Service to pay certain costs and fees of this procedure.

23. Paragraph 19 clearly refutes the objections of three persons that the agreement is unenforceable by establishing that a motion for enforcement of the settlement may be filed with this Court within six months of the approval of the settlement agreement. This period of time more than amply covers the claims and payment period set up by the agreement. Furthermore, the dispute procedures already outlined in the settlement agreement provide for additional avenues for enforcement at more immediate levels within the Postal Service. In addition, internal Equal Employment Opportunity (EEO) procedures will continue to be available to class members should other personal questions arise. All these measures which are designed to use judicial resources economically are sufficient to guarantee the enforceability for this agreement. The Court, therefore, finds that objections to the Agreement on the ground that it is unenforceable are without merit.

24. Paragraph 20 which expressly precludes any finding of liability against the Chicago Post Office is objected to by two persons. However, as the purpose of settlement agreements is to provide relief short of protracted trials and other delays, this paragraph is fairly included within the provisions of this agreement.

25. Paragraph 21 precludes any future attempts to recover medical costs for alleged injuries or punitive damages. This item of damage would not be available to plaintiffs in an action under the Rehabilitation Act, even if they had proceeded to trial and prevailed completely. Thus, Paragraph 21 merely reiterates the legal limitation on plaintiffs' recovery. The objections to this provision are, therefore, without merit.

26. Questions raised by two objectors concerning payment of pension contributions are met by the agreement of the Post Office to notify the Office of Personnel Management of the amounts of back pay awarded and the period of time covered; the Postal Service has no control over the method by which this will be credited by the Office of Personnel Management, but will make its own proportionate contribution to the pension fund for any of these amounts. This obligation is contained in Paragraph 22.

27. All of the factors set forth for judging fairness of the proposal as outlined in *Armstrong v. Board of School Directors of the City of Milwaukee*, 616 F.2d 305 (7th Cir. 1980) have been considered in this case:

a. . . . the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement;

b. the defendant's ability to pay;

c. the complexity, length, and expense of further litigation;

d. the amount of opposition to the settlement;

e. presence of collusion in reaching a settlement;

f. the reaction of members of the class to the settlement;

g. the opinion of competent counsel;

h. the stage of the proceedings and the amount of discovery completed.

28. Thus, this Court finds that the Settlement Agreement is fair, reasonable, and in the interests of the class members in the totality of the circumstances that have been presented during the course of this litigation and the fairness hearing conducted on July 17, 1983, and continued to July 1, 1983. All counsel and the

Court are fully aware of the nature of the litigation and the proof available, and the limitations of the remedies available in light of the statutes and case law.

III. Conclusions of Law

1. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, "A class action shall not be dismissed or compromised without the approval of court, and notice of the proposed dismissal or compromise shall be given all members of the class in such manner as the Court directs."

2. Although the essence of a settlement is compromise and that vitiates need for Court resolution of disputed issues, the Court through inquiry must determine that the settlement is fair, reasonable, and adequate. *Armstrong v. Board of School Directors of the City of Milwaukee*, 616 F.2d 305 (7th Cir. 1980); *In Re General Motors Corporation Engine Interchange Litigation*, 594 F.2d 106 (7th Cir. 1979):

"Because settlement of a class action, like settlement of any litigation is basically a bargained exchange between the litigants, the judiciary's role is properly limited to the minimum necessary to protect the interests of the class and the public. Judges should not substitute their own judgment as to optimal settlement terms for the judgments of the litigants and their counsel. *Armstrong, supra*, Page 135.

3. No settlement which either initiates or authorizes the continuation of clearly illegal conduct should be approved. *Armstrong, supra*, 319; *Robertson v. National Basketball Association*, 556 F.2d 682, 686 (2d Cir. 1977). In order for this factor to be demonstrated, prior judicial decisions must have found the practice to be illegal or unconstitutional as a general rule. *Armstrong, supra*, 321; *Robertson, supra*, 686.

4. This settlement agreement reveals no such facially disqualifying problems, for the only question raised by the union's concern about possible conflicts with collective bargaining agreements is resolved by *W. R. Grace and Company v. Local Union 759*, U.S. 51 U.S.L.W. 4643 (May 31, 1983) which establishes that the union's rights are adequately protected by binding third party arbitration which would be enforceable in the courts.

5. The Court has considered each of the factors mandated by *Armstrong, supra*, and has found that each of the relevant factors supported approval of the settlement. The settlement addresses itself to the allegations raised in the complaint and provides not only the class members, but all employees of the Chicago Post Office with relief for both actual and perceived dissatisfactions by providing accommodations for the disabled in the workplace. Thus, the required balance between the strength of plaintiff's case on the merits and the relief offered in the settlement, has been achieved. *Armstrong, supra*.

6. This Court has been involved in both of these cases from their inception and is well aware of the complexity, length, and expense that further litigation would entail. The necessity for expert witnesses to testify on physical disabilities and possible adaptations and modifications to existing equipment in the Chicago Post Office, the voluminous documents which would have to be received into evidence, the complicated individual determinations that would have to be made in defining handicapped status and back pay awards would have contributed to a trial of some weeks in length. Delay in instituting any compensatory measures would not serve the interests of either employees or the Chicago Post Office. Furthermore, possible appeals could increase the length of time before any relief was afforded in this situation. Therefore, the settlement agreement advances the date on which clearly useful adaptations in the

working situation can be made, and allows for the earliest possible institution of comprehensive adjustments to work and productivity patterns. *Armstrong, supra*, 324-5.

7. The proceedings in these cases have certainly reached a stage where all counsel involved are able to evaluate clearly the advantages to all the parties of reaching an agreement on this case. The terms of the settlement were negotiated over a period of six weeks which allowed ample time for all the parties to consult with their clients during the continuing course of discussions, and the openness of this process demonstrates the absence of any possibility of collusion arriving at the final terms of the agreement. *Armstrong, supra*, 325. Furthermore, the commitment of the Postal Service to constitute the \$300,000 fund demonstrates their ability to pay this amount.

8. As demonstrated by the detailed review of the Settlement Agreement in the Findings of Fact above, the total Agreement is fair and reasonable and beneficial to the class members as a whole. The Court has carefully considered the objections of the ten objecting class members including four class representatives. The Court notes that the 10 objections received represent less than 3 percent of the potential class members who were notified. Examining the Settlement Agreement in light of these objections reinforces the conclusion that the Settlement is fair to the class as a whole and, in fact, deals with some of the specific objections such as the alleged inability to enforce the Agreement. While the Court has given consideration to the fact that four class representatives have filed objections, their objections do not mitigate against approval of this Settlement Agreement which the Court has found to be fair and reasonable. *Parker v. Anderson*, 667 F.2d 1204, 1207 (5th Cir. 1982), *In Re General Motors Corp. Engine Interchange Lit.*, 594 F.2d 1106, 1128 (7th Cir. 1979).

9. Thus, this Court finds no impediment to entry of an order approving the settlement of this lawsuit as fair, reasonable, and equitable. *Armstrong, supra*.

WHEREFORE, it is hereby ordered as of this date,

1. That the Settlement Agreement in these consolidated cases is given final approval, and that such approval will constitute a final adjudication as to the individual and specific claims of all class members.

2. Within fourteen (14) days of this date, the Chicago Post Office shall post the "Notice to File Claims" on all Chicago Post Office employee bulletin boards.

3. That these consolidated actions are dismissed with leave to reinstate within six (6) months for the limited purpose of filing a motion for enforcement of the settlement agreement. If no such motion is filed within said six (6) month period, an order of dismissal with prejudice shall be entered by this Court.

So ordered,

/s/ George N. Leighton

George N. Leighton,
United States District Judge

Dated:

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSEPH S. ROHDE

Plaintiff

v

WILLIAM F. BOLGER, POSTMASTER
GENERAL, UNITED STATES POSTAL
SERVICE, ET AL

Defendants

JAMES McDONALD et al

Plaintiffs

v

WILLIAM F. BOLGER etc et al

Defendants

79 C 1636

RECEIVED Jun 1 1983

80 C 4991

OBJECTIONS TO PROPOSED
SETTLEMENT OF CLASS ACTION

NOW COMES JOSEPH S. ROHDE by his attorneys
DITKOWSKY & CONTORER and objects to the terms
and conditions of the proposed settlement agreement as
follows:

1. No reasonable accommodations have been made in a guaranteed manner to plaintiff for full 40-hour work week.
2. Full back pay was not given to complainants.
3. The objector is able to work a full 40-hour week, but the settlement agreement does not guarantee that he will be given a full 40-hour work week. This damages the objector in that the contributions to his pension plan are based upon the number of hours per week worked.

The contribution is 7½% of the pay for an 80-hour pay period (2 weeks). However, the objector is not guaranteed an 80-hour biweekly work period, so he will probably not receive same from the defendants and this will in effect lessen the amount of money he can contribute to his pension plan. This in turn will have to be paid up by him personally through his own individual contribution aside from the usual pay deductions. If he does not personally make contributions, he will not receive full pension upon retirement.

3. The settlement agreement does not fully reimburse the objector for back pay and still leaves him approximately \$1000.00 out.

4. No provision was made in the settlement agreement for awarding objector damages and punitive damages. The original and amended complaints ask for damages for the objector, but the settlement agreement does not even mention damages. The objector has sustained damages because of the conduct toward him of the defendants. The defendants ignored his medical problem of which they were fully informed by proper medical reports and caused him to stand at job assignments for 2-3 hours per job period, even though they knew medical disabilities would be increased because of his disability to his legs and back because he has diabetes. The forcing of the objector by the defendants to do work that was medically not feasible when proper jobs were available for him in which he would not have to stand for hours at a time caused him severe increased pain in his legs and right side which persists until the present time. Further, defendants' insistence upon objector's starting work at 2:00 a.m. disrupted his entire medical program for controlling his diabetes, for which situation the VA Hospital wrote a letter to the defendants, and this disruption caused him to suffer mental hallucinations which included his trying to get up and go to work in the daytime even though he was scheduled to go to work at 2:00 a.m. Further, as a result of being

forced to stand for hours, objector has been advised by his doctor that an operation on his feet will be required which will force him to be absent from his work for approximately three months. Further, forcing the objector to go to work at 2:00 a.m. has rendered him isolated from his friends and companions because he must work during the night and sleep during the day which is opposite the schedule of his friends and acquaintances. Further, he has, because of his enforced work time, been required to go home from the post office at late times of the night at which time it is dangerous for a disabled person to have to be out on the streets alone. Several times the objector was sent home at 4:00 or 5:00 a.m. because the defendants told him there was no work for him and he had to go out by himself in the dark and use public transportation available at the time.

5. That the settlement agreement does not find that any of the defendants did anything wrong. In fact there is a statement that there was to be no finding of any wrongdoing on the part of the defendants. This is completely objectionable to the objector as the entire claim was based upon wrongdoing by the defendants and its employment practices towards disabled persons. A finding that there was to be no finding of wrongdoing is an insult to the objector and is factually and legally incorrect.

6. The settlement agreement should guarantee the objector an 80-hour pay period as there are jobs available in the post office that he can do within his physical disability available for an 80-hour pay period and he is fully able to perform these jobs.

7. That the settlement agreement uses terms such as "reasonably accommodated" which gives the defendants an excuse not to perform the agreement made and which requires additional court appearances and time off from work for objector to try to enforce the agreements and terms thereof against the defendants. A statement such as Paragraph 3 on page 3 of the agreement "to the ex-

tent practicable" and "reasonably accommodate" is too vague to be enforceable and subject to too wide an interpretation.

8. Paragraph 6 of proposed agreement contains similarly vague language such as "limited and light duty employees will be provided with *the fullest working day possible with reasonable accommodations*". To interpret "the fullest working day possible" could be the motivation for additional lawsuits because of the possibility of inaccurate interpretation. Some guarantees to the objector are necessary in this area so that there can be no doubt as to his rights under the agreement. Paragraph 6 of the agreement contains a statement "to the maximum extent practical, disabled employees . . . will be assigned to light duty assignments." Who is to determine "the maximum extent practical". The very words used cannot help but cause additional court appearances, disagreements and squabbling. The terms of this agreement are not specific enough to be enforceable or to be reasonably interpreted.

9. The term "reasonable accommodation" is used throughout the agreement, in paragraph 7 as an example. Nowhere is "reasonable accommodation" defined specifically. The definition of "reasonable accommodation" on page 2 of the agreement is indefinite as to how it would be applied to the objector. When it says "reasonable accommodations may include but are not limited to certain matters following . . ." the terms used "as is appropriate or modification or examination or other similar action" are vague and will be the basis for misunderstandings and further problems with the defendants. This phrase is used in the definition of "reasonable accommodation" in paragraph 2.

10. The compensation clause in paragraph 12 results in less than full back pay for the objector and the 300,000.00 maximum principal amount to be paid by the Post Office no matter how many claims are filed is a clause

that renders the objector unable to determine what amount he will actually receive from this agreement. There is no way of knowing how many claims there may be as this is a class action suit. Every claim made will therefore reduce objector's interest in the 300,000.00 fund. The hourly pay assigned to various pay levels appears to be arbitrary and this is detrimental to objector's interest in that most of the hours he lost because of defendant's wrongdoing were lost at a time when he was being compensated at an hourly pay rate of \$10.-\$11. an hour while the pay for hours to be used for his compensation is only \$9.61 per hour. Objector cannot agree to this hourly figure. Some provision must be made for those who had a higher hourly rate such as the objector.

WHEREFORE, the undersigned objects to the settlement agreement in its present form and prays this Court not accept the settlement agreement as it has been presented.

.....

STATE OF ILLINOIS
COUNTY OF LAKE

JOSEPH S. ROHDE, after being duly sworn, on oath deposes and states that he is the plaintiff in the above cause; that he has read and understands the Objections to proposed settlement of class action by him subscribed; and that all statements contained therein are true and correct, to the best of his knowledge and belief.

/s/ Joseph S. Rohde

SUBSCRIBED & SWORN TO
before me this 27th
day of May, 1983

.....

Notary public

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSEPH S. ROHDE, individually and on behalf of all
other United States Postal Service employees similarly
situated,

Plaintiff,

vs.

WILLIAM F. BOLGER, Postmaster General, United
States Postal Service, FRANK C. GOLDIE, Chicago
Postmaster, and R. B. GOULD, Regional Director, Em-
ployee and Labor Relations, Central Region, United
States Postal Service,

Defendants.

CIVIL ACTION NO: 79 C 1636

FIRST AMENDED COMPLAINT

NOW COMES the Plaintiff, JOSEPH S. ROHDE, in-
dividually and on behalf of all other United States
Postal Service employees similarly situated, by his at-
torney, GORDON V. LEVINE, and complaining of the
Defendants, WILLIAM F. BOLGER, Postmaster Gen-
eral, United States Postal Service, FRANK C. GOLDIE,
Chicago Postmaster, and R. B. GOULD, Regional Di-
rector, Employee and Labor Relations, Central Region,
United States Postal Service, alleges, as follows:

COUNT I

JURISDICTION

1. This Court has jurisdiction under Section 794a of
Title 29 of the United States Code (Remedies for Dis-
crimination on the Basis of Physical Handicap), includ-
ing the application of Sections 2000e-16 and 2000e-5(f)
through (k) of Title 42 of the United States Code, and
under Section 1331 of Title 28 of the United States
Code (Federal Question), as it hereinafter more fully
appears. The matter in controversy exceeds, exclusive
of interest and costs, the sum of Ten Thousand Dollars.

SUBSTANTIVE CAUSE OF ACTION

2. This action is founded upon:

(a) The Rehabilitation Act of 1973, as amended, Section 701, *et seq.* of Title 29 of the United States Code, providing for the employment of handicapped individuals; and,

(b) The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

CLASS ACTION

3. The Plaintiff brings this lawsuit as a class action on behalf of himself and all other United States Postal Service employees within the City of Chicago similarly situated. The class of plaintiffs consists of those postal employees who work in the City of Chicago and suffer physical handicaps. Such individuals have been subjected to economic harassment and mental humiliation due to the United States Postal Service's discriminatory policies and practices concerning the work schedule of handicapped employees. The questions of law and fact presented herein are common to the entire class; the claims of the Plaintiff are typical to the claims of the class; the Plaintiff will fairly and adequately protect the interests of the class; and the prosecution of separate actions by individual members of the class would be wasteful and would generate unnecessary litigation.

PARTIES

4. The Plaintiff, JOSEPH S. ROHDE, has been an employee of the United States Postal Service for twenty five years, has compiled an excellent record including a commendation for outstanding service. He serves as a Distribution Clerk assigned to the City Letter Section of the Main Post Office, 433 West Van Buren Street, Chicago, Illinois. He has suffered fifty percent disability to his left hand as the result of an injury which occurred during military service, is a diabetic who re-

quires daily injections of Insulin, and has degenerative arthritis in both of his knees. He is assigned to "light duty" status as he would be unable to lift heavy objects or stand on his feet for long periods of time. His work station is not a "light duty" work area, but his handicap does not interfere with the performance of his duties for which he is well-qualified, and he performs every job that the able-bodied section employees are required to perform. Due to his diabetic condition, however, he needs to maintain a regular work schedule with as little variation in starting and finishing time as possible.

5. The Defendant, WILLIAM F. BOLGER, is the Postmaster General of the United States Postal Service and is ultimately responsible for the employment policies and practices which govern the employees of the Service.

6. The Defendant, FRANK C. GOLDIE, is the Chicago Postmaster of the United States Postal Service, and is directly responsible for the employment policies and practices out of which this action arises.

7. The Defendant, R. B. GOULD, is the Regional Director of Employee and Labor Relations for the Central Region of the United States Postal Service, and has affirmed the policies and practices of the Chicago Post Office concerning the work schedules of Chicago Post Office employees assigned to "light duty".

FACTUAL BASIS FOR PLAINTIFF'S CLAIM FOR RELIEF

8. Beginning in May of 1978, and as a continuing policy and practice since that time, the work schedules of postal clerks in the City of Chicago has been adjusted from time to time to greatly reduce the number of hours in the typical tour of duty and basic work week for employees with "light duty" assignments, with concomitant loss of pay. As a further element of this discriminatory policy and practice, the "light duty" em-

employees have been required to work irregular hours, with substantially greater variation in the starting and ending times of tours of duty than is commonly required of postal employees not assigned to "light duty."

9. The Plaintiff is informed and believes that no effort to make an individual determination as to what jobs an employee can perform after such individual has been assigned to "light duty" is attempted as a matter of policy, and assignment of "light duty" employees is made on the basis of favoritism or on an ad hoc basis.

10. The reduction in hours of the basic work week and the periodic reduction of the length of the tour of duty of "light duty" employees bears no relationship to the job performance of handicapped individuals and constitutes a violation of Section 794 of Title 29 of the United States Code which, in pertinent part, provides as follows:

No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from participation in, or be denied the benefits of, or be subjected to discrimination . . . under any program or activity conducted by . . . the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978.

11. The Defendant, WILLIAM F. BOLGER, not only has not met the affirmative mandate of Section 794; he has allowed the implementation of discriminatory policies and practices against handicapped postal employees such as the policies and practices complained of herein.

12. The Plaintiff is informed and believes that the scheduling practices which give rise to this action and which invidiously discriminate against the handicapped

employees of the Service were instituted for the purpose of reducing the number of employees listed as having "light duty" status in the Chicago Post Office.

13. Such practices constitute economic harassment of the handicapped and are not justified by any business necessity. The Defendants have at their disposal alternative legitimate means of removing any employees seeking to avoid their assigned duties by improperly procuring "light duty" status which, means would not cause unnecessary injury to handicapped postal employees who are legitimately given "light duty" status.

14. Since the institution of the policies and practices complained of, Plaintiff has lost in excess of one hundred twenty hours work, and has had his work schedule adjusted many times. He has suffered the loss of more than \$1000.00 in wages and has also suffered physically from the irregularity of scheduling of his tour of duty and from a policy of humiliation of handicapped postal employees.

15. On June 15, 1978, the Plaintiff made an informal complaint of discrimination, objecting to the work scheduling practices to which handicapped postal employees are subjected. No action was taken on the basis of Plaintiff's informal complaint to remedy the discriminatory practices. A copy of the Equal Employment Opportunity Counselor's report of such complaint is appended hereto as Exhibit "A" and by this reference, made a part hereof.

16. On July 7, 1978, the Plaintiff filed a formal complaint of discrimination in employment with the Regional Director of Employee and Labor Relations of the United States Postal Service. On March 22, 1979, the Defendant, R.B. GOULD, rejected Plaintiff's complaint on the basis that all other handicapped postal employees "work under the same conditions" and on the further basis that the discriminatory practices are permitted under the local collective bargaining agreement. The decision of Defen-

dant, R.B. GOULD, authoritatively affirms the class nature of the Plaintiff's claim. A copy this decision is appended hereto as Exhibit "B" any by this reference, made a part hereof. Having exhausted available administrative procedures without securing remedial action, Plaintiff seeks judicial relief in this Court.

COUNT II

1-16. Plaintiff realleges the allegations contained in paragraphs 1 through 16 inclusive, of Count I hereof as paragraphs 1 through 16 of this Count.

17. The denial to handicapped postal employees of the same rights as other postal employees concerning the duration of a tour of duty and the number of hours in the basic work week bears no rational relationship to job performance, constitutes invidious discrimination and creates an artificial, arbitrary and unnecessary barrier to equality of employment opportunity in violation of the Equal Protection Clause of the United States Constitution.

WHEREFORE, plaintiff prays:

1. That the Court declare that the Defendants' across the board policies and practices which discriminate against the right of handicapped postal employees to equal treatment in the assignment of work schedules violate the Constitution and laws of the United States in that they adversely impact upon the handicapped without any rational relationship to job performance.

2. That the Court permanently enjoin the Defendants from continuing to discriminate against handicapped employees similarly situated to the Plaintiff in the assignment of work schedules.

3. That the Plaintiff and all similarly situated employees be awarded back pay for work lost as a result of Defendants' policies and practices.

AFFIDAVIT OF MAILING

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

GORDON V. LEVINE, being first duly sworn, on oath deposes and says that he served a copy of the foregoing FIRST AMENDED COMPLAINT of Thomas P. Sullivan, United States Attorney, and Narda J. Cisco, Assistant United States Attorney, by placing a copy thereof addressed to such parties at 219 South Dearborn Street, Chicago, Illinois, in an envelope with proper postage prepaid, and depositing same in the United States Postal Chute located at 39 South LaSalle Street, Chicago, Illinois, on the 17th day of September, 1979, before the hour of 5:00 P.M.

/s/ GORDON V. LEVINE

SWORN AND SUBSCRIBED TO
before me this 17th day
of September, 1979.

Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSEPH S. ROHDE,

Plaintiff,

v.

WILLIAM F. BOLGER, Postmaster General,
United States Postal Service, et al,

Defendants.

JAMES McDONALD, et al,

Plaintiffs,

v.

WILLIAM F. BOLGER, Postmaster General,
United States Postal Service, et al,

Defendants.

No. 79 C 1636

JUDGE GEORGE N. LEIGHTON
U.S. DISTRICT COURT

No. 80 C 4991

JUDGE GEORGE N. LEIGHTON

ORDER OF CLASS CERTIFICATION

RECEIVED Mar. 18, 1983

This cause coming on for hearing on Plaintiffs' Motion for Class Certification and the Court being fully advised in the premises;

IT IS THEREFORE ORDERED that Plaintiffs' Motion is granted. The class as certified shall be defined as:

"All persons who were qualified handicapped employees of the United States Postal Service (as defined by the Rehabilitation Act of 1973 as amended in 1978, 29 U.S.C. § 791 *et seq.* and interpretation thereof) and assigned to light duty, limited duty or rehab limited duty in the Chicago Post Office at any time during the period May 17,

1978, to the present, and who, with or without reasonable accommodation, could perform the essential functions of their position in the Chicago Post Office.”

IT IS FURTHER ORDERED that the previous designation of the discovery cutoff date is stricken.

DATED: March 23, 1983.

ENTER:

GEORGE N. LEIGHTON

Judge GEORGE N. LEIGHTON

HARRY GOLTER

WILDMAN, HARROLD, ALLEN & DIXON

One IBM Plaza

Suite 3000

Chicago, Illinois 60611

(312) 222-0400

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAMES McDONALD, ALLEN ALEXANDER, WILLIE ARMSTRONG, LELITA BECKMAN, HARRY BENTLEY, DORIS BOARDWATER, HENRY CHARITY, ALDINE DAVIE, CAROLYN DAVIS, GRETA ELEAN, LOUISE FLOWERS, WILLIE FULLER, BARBARA HARRIS, MARY BORTON, PHILIP MURRAY, SHARON NELSON, WILLIETTA NOBLE, JOS. PALADINO, S. FLOYD PERRY, WILBERT ROBINS, WILLIE ROY, ESTELLE SADDLER, DAVE SINGLETON, JOHN SMITH, GRACIE WILLIAMS and JULIA WHITLEY, individually and on behalf of all United States Postal Service Employees, similarly situated,

Plaintiffs,

vs.

WILLIAM F. BOLGER, Postmaster General, United States Postal Service, FRANK C. GOLDIE, Chicago Postmaster and R. B. GOULD, Regional Director, Employee and Labor Relations, Central Region, United States Postal Service.

Defendants

RECEIVED May 4, 1981
80 C 4991

SECOND AMENDED COMPLAINT

The plaintiffs, James McDonald, Allen Alexander, Willie Armstrong, Lelita Beckman, Harry Bentley, Doris Boardwater, Henry Charity, Aldine Davis, Carolyn Davis, Greta Elean, Louise Flowers, Willie Fuller, Barbara Harris, Mary Horton, Philip Murray, Sharon Nelson, Willietta Noble, Jos. Paladino, S. Floyd Perry, Wilbert Robins, Willie Roy, Estelle Saddler, Dave Singleton, John Smith, Gracie Williams, and Julia Whitley, individually and on behalf of all United States Postal Service Employees, similarly situated, by their attorneys, Dolores V.

Horan and James G. Condon, complain of the defendants, William F. Bolger, Postmaster General, United States Postal Service, Frank C. Goldie, Chicago Postmaster, and R. B. Gould, Regional Director, Employee and Labor Relations, Central Region, United States Postal Service, as follows:

Jurisdiction

1. Jurisdiction is based upon Title 29, U.S.C. Sec. 794(a) (1978), Title 42, U.S.C. Secs. 2000(c)-16 and 2000(e)-S(f) through 2000(e)-5(k) (1972), and Title 28, U.S.C. Sec. 1331 (1976). The matter in controversy exceeds \$10,000, exclusive of interest and costs.

Substantive Cause of Action

2. This cause of action is based upon:

(a) The Rehabilitation Act of 1973, as amended, Title 29, U.S.C. Sec. 701 et seq., and

(b) Title 42, U.S.C. Sec. 2000(e)-16 and 2000e-s(f) through (c)-5(k) (1972).

(c) Equal Protection as contained in the Due Process Clause of the Fifth Amendment to the U. S. Constitution.

Class Action

3. Plaintiffs sue on their own behalf and on behalf of all other United States Postal Service employees similarly situated within the City of Chicago. The class consists of postal employees working in the City of Chicago who are suffering from physical handicaps and therefore are assigned to light duty. The class is so numerous that joinder of all members is impracticable.

4. The United States Postal Service has discriminated against plaintiffs and other members of this handicapped class by requiring daily calls to inquire as to the availability of work. Despite the call-in requirement, these

plaintiffs often are sent home after as little as two hours of work. Since going on light duty, plaintiffs and other members of the class have been required to work night hours and weekends without respite. The unvarying schedule of night and weekend work has deprived plaintiffs and other class members of the needed association of their families and friends and has interfered with religious observances. Plaintiffs are required to carry light duty identification to be shown at the whim of the supervisor in charge. Plaintiffs and other members of the class could qualify for more activities at the post office if chairs with back rests were provided. The legitimate needs of the postal service bear no reasonable relation to these discriminatory policies and practices of the postal service directed against plaintiffs and other class members.

5. These plaintiffs will protect the interests of the class fairly and adequately since they typify the questions of law and fact which are common to the class. Moreover, a class action will avoid an unnecessary and wasteful multiplicity of litigation. In addition, the parties opposing the class have acted or refused to act on grounds generally applicable to the class.

Parties

6. Plaintiff James McDonald has worked for the postal service for 12 years. He is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Mr. McDonald has osteoarthritis of the lumbar spine, resulting in an inability to lift heavy objects. He was cleared for assignment to light duty work by the medical examiner of the postal facility. Mr. McDonald's physical handicap does not interfere with his work as a clerk and allows him to complete the same tasks which the ablebodied employees of his section are required to perform, with the exception of lifting. He has been commended for service to the postal system and is a veteran of the Armed Forces with an honorable dis-

charge. He has suffered the loss of at least \$1,500 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and of the Equal Employment Opportunity Commission. At present, plaintiff is in the process of appealing a finding by the Equal Employment Opportunity Commission which was adverse to him. The plaintiff believes these avenues of relief to be exhausted in that no true administrative remedy exists.

7. Plaintiff Allen Alexander has worked for the postal service for 21 years. He is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Mr. Alexander has osteoarthritis of the lumbar and cervical spine, resulting from an injury on the job. He has difficulty bending and requires a chair with a back rest. He was cleared for assignment to light duty work by the medical examiner at the postal facility. Mr. Alexander's physical handicap does not interfere with his work as a clerk and allows him to complete the same tasks which the ablebodied employees of his section are required to perform, with the exception of bending. He has suffered the loss of at least \$1,000 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. He has complained to the American Postal Workers Union and to the Equal Employment Opportunity Commission. He believes these avenues of relief to be exhausted in that no true administrative remedy exists.

8. Plaintiff Willie Armstrong has worked for the postal service for 11 years. He is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Mr. Armstrong has hypertensive heart disease, resulting in an inability to stand for long periods and to lift heavy objects. He was cleared for assignment to light duty work by the medical examiner of the postal facility. Mr. Armstrong's physical handicap

does not interfere with his work as a clerk and allows him to complete the same tasks which the ablebodied employees of his section are required to perform, with the exception of lifting and standing. He is a veteran of the Armed Forces. He has suffered the loss of at least \$1,000 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. He has complained to the appropriate personnel of the American Postal Workers Union and of the Equal Employment Opportunity Commission. He believes these avenues of relief to be exhausted in that no true administrative remedy exists.

9. Plaintiff Lelita Beckman is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. She has a spinal condition resulting in an inability to lift heavy objects and to stand for long periods. She was cleared for assignment to light duty work by the medical examiner of the postal facility. Miss Beckman's physical handicap does not interfere with her work as a clerk and allows her to complete the same tasks which the ablebodied employees of her section are required to perform, with the exception of lifting and standing. She has suffered the loss of at least \$1,000 in wages. She has complained to the appropriate personnel of the American Postal Workers Union and of the Equal Employment Opportunity Commission but believes these avenues of relief to be exhausted in that no true administrative remedy exists.

10. Plaintiff Harry Bentley is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Mr. Bentley has osteoarthritis of the lumbar spine, resulting in an inability to lift heavy objects. He was cleared for assignment to light duty work by the medical examiner of the postal facility. Mr. Bentley's physical handicap does not interfere with his work as a clerk and allows him to complete the same tasks which the ablebodied employees of his section are required to perform, with the exception of lifting. He

has suffered the loss of at least \$1,000 in wages. He has complained to the appropriate personnel of the American Postal Workers Union and of the Equal Employment Opportunity Commission. He believes these avenues of relief to be exhausted in that no true administrative remedy exists.

11. Plaintiff Doris Boardwater is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Miss Boardwater has a spinal condition which prevents her from lifting heavy objects and from standing for long periods. She was cleared for assignment to light duty work by the medical examiner of the postal facility. Miss Boardwater's physical handicap does not interfere with her works as a clerk and allows her to complete the same tasks which the able-bodied employees of her section are required to perform, with the exception of lifting. She has suffered the loss of at least \$1,000 in wages. She has complained to the appropriate personnel of the American Postal Workers Union and of the Equal Employment Opportunity Commission. She believes these avenues of relief to be exhausted in that no true administrative remedy exists.

12. Plaintiff Henry Charity has worked for the postal service for 13 years. He is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Mr. Charity has an injury of the lumbar spine, resulting in an inability to lift heavy objects. He was cleared for assignment to light duty work by the medical examiner of the postal facility. Mr. Charity's physical handicap does not interfere with his work as a clerk and allows him to complete the same tasks which the able-bodied employees of his section are required to perform, with the exception of lifting and standing for long periods. He is a veteran of the Armed Forces with an honorable discharge. He was injured on job. Mr. Charity's light duty work schedule keeps him from being with his children and interferes with his church worship. This plaintiff has suffered the loss of at least \$1,000 in wages

and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and of the Equal Employment Opportunity Commission.

13. Plaintiff Aldine Davis has worked for the postal service for 15 years. She is a part time flexible employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Ms. Davis has osteoarthritis of the lumbar spine and both knees and left shoulder, resulting in an inability to lift heavy objects or to remain standing for long periods. She needs a back for her chair. She was cleared for assignment to light duty work by the medical examiner of the postal facility. Ms. Davis's physical handicap does not interfere with her work as a clerk and allows her to complete the same tasks which the able-bodied employees of her section are required to perform, with the exception of lifting. She has been commended for service to the postal system. This plaintiff has suffered the loss of at least \$2,000 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and of the Equal Opportunity Commission. The plaintiff is in the process of exhausting these avenues of relief but believes her efforts in this respect to be futile in that no true administrative remedy exists.

14. Plaintiff Greta Elean has worked for the postal service for 11 years. She is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Ms. Elean has an on the job injury of the upper spine, resulting in an inability to lift heavy objects and stand long periods. She was cleared for assignment to light duty work by the medical examiner of the postal facility. Ms. Elean's physical handicap does not interfere with her work as a clerk and allows her to complete the same tasks which the able-bodied employees

of her section are required to perform, with the exception of lifting and standing. She needs a chair for her back. This plaintiff has suffered the loss of at least \$2,000 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and of the Equal Employment Opportunity Commission. The plaintiff is in the process of exhausting these avenues of relief but believes her efforts in this respect to be futile in that no true administrative remedy exists.

15. Plaintiff Louise Flowers has worked for the postal service for 17 years. She was a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Ms. Flowers had an injury of the lumbar spine received on the job which resulted in an inability to lift heavy objects. She can't stand a long time. She needs a chair with a back. Ms. Flowers's physical handicap did not interfere with her work as a clerk and allowed her to complete the same tasks which the ablebodied employees of her section were required to perform, with the exception of lifting. She is now applying for disability. She is not working. This plaintiff has suffered the loss of at least \$500 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and of the Equal Employment Opportunity Commission. The plaintiff is in the process of exhausting these avenues of relief but believes her efforts in this respect to be futile in that no true administrative remedy exists.

16. Plaintiff Willie Fuller has worked for the postal service for 11 years. He is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Mr. Fuller has a slipped disc of the lumbar spine, resulting in an inability to lift heavy objects or to stand for long periods of time. He was cleared

for assignment to light duty work by the medical examiner of the postal facility. Mr. Fuller's physical handicap does not interfere with his work as a clerk and allows him to complete the same tasks which the able-bodied employees of his section are required to perform, with the exception of lifting. He is a veteran of the Armed Forces with an honorable discharge. Mr. Fuller was injured on the job. This plaintiff has suffered the loss of at least \$500 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and the Equal Employment Opportunity Commission. The Equal Employment Opportunity refused to cooperate. The plaintiff is now in arbitration regarding an unjustified suspension. He is in the process of exhausting these avenues of relief but believes his efforts in this respect to be futile in that no true administrative remedy exists.

17. Plaintiff Barbara Harris has worked for the postal service for 10 years. She is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Ms. Harris has a condition of the lumbar spine, resulting in an inability to lift heavy objects or to stand or bend for long periods. She needs a back rest for her chair. She was cleared for assignment to light duty work by the medical examiner of the postal facility. Ms. Harris's physical handicap does not interfere with her work as a clerk and allows her to complete the same tasks which the able-bodied employees of her section are required to perform, with the exception of lifting. This plaintiff has suffered the loss of at least \$1000 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union. The plaintiff is in the process of exhausting this avenue of relief but believes her efforts in this respect to be futile in that no true administrative remedy exists.

18. Plaintiff Mary Horton has worked for the postal service for 12 years. She is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Ms. Horton has a condition of the upper and lower spine received on the job. The condition resulted in an inability to lift heavy objects. She is unable to stand for long periods. She needs a back support on her chair. She was cleared for assignment to light duty work by the medical examiner of the postal facility. Ms. Horton's physical handicap does not interfere with her work as a clerk and allows her to complete the same tasks which the ablebodied employees of her section are required to perform, with the exception of lifting and standing. This plaintiff has suffered the loss of at least \$2000 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and of the Equal Employment Opportunity Commission.

19. Plaintiff Phillip Murray has worked for the postal service for 6 years. He is a part time flexible employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Mr. Murray has osteoarthritis of the lumbar spine, resulting in an inability to lift heavy objects. He was cleared for assignment to light duty work by the medical examiner of the postal facility. Mr. Murray's physical handicap does not interfere with his work as a clerk and allows him to complete the same tasks which the ablebodied employees of his section are required to perform, with the exception of lifting. He has been commended for service to the postal system and is a veteran of the Armed Forces with an honorable discharge. He injured his lower back on the job. This plaintiff has suffered the loss of at least \$1500 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and

of the Equal Employment Opportunity Commission. The plaintiff is in the process of exhausting these avenues of relief but believes his efforts in this respect to be futile in that no true administrative remedy exists.

20. Plaintiff Sharon Nelson has worked for the postal service for 4 years. She is a part time flexible employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Ms. Nelson has arthritis of the left knee and lower spine, resulting from an on-the-job injury. The condition resulted in an inability to lift heavy objects and to stand for long periods. She was cleared for assignment to light duty work by the medical examiner of the postal facility. Ms. Nelson's physical handicap does not interfere with her work as a clerk and allows her to complete the same tasks which the ablebodied employees of her section are required to perform, with the exception of lifting or prolonged walking. The plaintiff has suffered the loss of at least \$2000 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and of the Equal Employment Opportunity Commission.

21. Plaintiff Willietta Noble has worked for the postal service for 20 years. She is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Ms. Noble broke her left shoulder on the job in 1977, resulting in an inability to lift heavy objects and to stand for long periods. Ms. Noble's physical handicap does not interfere with her work as a clerk and allows her to complete the same tasks which the ablebodied employees of her section are required to perform, with the exception of lifting and standing for long periods. This plaintiff has suffered the loss of at least \$2000 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers

Union and of the Equal Employment Opportunity Commission. The plaintiff is in the process of exhausting these avenues of relief but believes her efforts in this respect to be futile in that no true administrative remedy exists.

22. Plaintiff Joseph Paladino has worked for the postal service for 15 years. He is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Mr. Paladino has osteoarthritis of the back and shoulder and right side, resulting in an inability to lift heavy objects and to stand for long periods of time. He needs a back rest on his chair. He was injured on the job. He was cleared for assignment to light duty work by the postal facility. Mr. Paladino's physical handicap does not interfere with his work as a clerk and allows him to complete the same tasks which the ablebodied employees of his section are required to perform, with the exception of lifting. This plaintiff has suffered the loss of at least \$5000 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and the Equal Employment Opportunity Commission. The plaintiff is in the process of exhausting these avenues of relief but believes his efforts in this respect to be futile in that no true administrative remedy exists.

23. Plaintiff Floyd Perry worked for the postal service for 16 years. He was a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Mr. Perry has an injury to the left shoulder and to the lumbar spine, resulting in an inability to lift heavy objects and to stand for long periods. He was cleared for assignment to light duty work by the medical examiner of the postal facility. Mr. Perry's physical handicap did not interfere with his work as a clerk and allowed him to complete the same tasks which the ablebodied employees of his section were required to perform, with the exception of lifting. He was termi-

nated in August of 1980 by the postal service in violation of Article 37 of the union contract. This plaintiff has suffered the loss of at least \$3000 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and the Equal Employment Opportunity Commission. The plaintiff has attempted exhausting these avenues of relief but believes his effort in this respect to be futile and in that no true administrative remedy exists.

Plaintiff Wilbert Robins has worked for the postal service for 12 years. He is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Mr. Robins has osteoarthritis of the lumbar spine, resulting in an inability to lift heavy objects. He was cleared for assignment to light duty work by the medical examiner of the postal facility. Mr. Robins's physical handicap does not interfere with his work as a clerk and allows him to complete the same tasks which the ablebodied employees of his section are required to perform, with the exception of lifting. He has been commended for service to the postal system and is a veteran of the Armed Forces with an honorable discharge. This plaintiff has suffered the loss of at least \$1500 in wages and has suffered harassment such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and the Equal Employment Opportunity Commission. The plaintiff is in the process of exhausting these avenues of relief but believes his efforts in this respect to be futile in that no true administrative remedy exists.

25. Plaintiff Willie Roy has worked for the postal service for 8 years. He is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Mr. Roy has lower L-5 spine disability received from an on the job injury, resulting in an

inability to lift heavy objects and to stand for long periods. He was cleared for assignment to light duty work by the medical examiner of the labor department. Mr. Roy's physical handicap does not interfere with his work as a clerk and allows him to complete the same tasks which the ablebodied employees of his section are required to perform, with the exception of lifting. He is a veteran of the Armed Forces with an honorable discharge. He can only work four hours a day. This plaintiff has suffered the loss of at least \$1500 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and the Equal Employment Opportunity Commission. The plaintiff is in the process of exhausting these avenues of relief but believes her efforts in this respect to be futile in that no true administrative remedy exists.

26. Plaintiff Estelle Saddler has worked for the postal service for 12 years. She is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Ms. Saddler has osteoarthritis of the lumbar spine, resulting in an inability to lift heavy objects. She was cleared for assignment to light duty work by the medical examiner of the postal facility. Ms. Saddler's physical handicap does not interfere with her work as a clerk and allows her to complete the same tasks which the ablebodied employees of her section are required to perform, with the exception of lifting. This plaintiff has suffered the loss of at least \$1000 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and of the Equal Employment Opportunity Commission. The plaintiff is in the process of exhausting these avenues of relief but believes her effort in this respect to be futile in that no true administrative remedy exists.

27. Plaintiff Dave Singleton has worked for the postal service for 10 years. He is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Mr. Singleton has physical problems with the lower back and left knee, resulting in an inability to lift heavy objects and to do prolonged standing. He was cleared for assignment to light duty work by the medical examiner of the postal facility. Mr. Singleton's handicap does not interfere with his work as a clerk and allows him to complete the same tasks which the able-bodied employees of his section are required to perform, with the exception of lifting and standing. He is a veteran of the Armed Forces with an honorable discharge. This plaintiff has suffered the loss of at least \$1000 in wages and has suffered harassment, such as being required to carry and produce medical identification at all time. The plaintiff has complained orally to the appropriate personnel of the American Postal Workers Union and of the Equal Employment Opportunity Commission.

28. Plaintiff John Smith has worked for the postal service for 12 years. He is a regular full time employees of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Mr. Smith has osteoarthritis of the lumbar spine, resulting in an inability to lift heavy objects. He was cleared for assignment to light duty work by the medical examiner of the postal facility. Mr. Smith's physical handicap does not interfere with his work as a clerk and allows him to complete the same tasks which the able-bodied employees of his section are required to perform, with the exception of lifting. This plaintiff has suffered the loss of at least \$2000 in wages and has suffered harassment, such as being required to carry and produce medical identification at all time. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and of the Equal Employment Opportunity Commission.

29. Plaintiff Gracie Williams has worked for the postal service for 15 years. She is a regular full time employee

of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Ms. Williams has physical problems with her lumbar spine, resulting in an inability to lift heavy objects and to stand for long periods. She needs a back rest on her chair. Ms. William's physical handicap does not interfere with her work as a clerk and allows her to complete the same tasks which the ablebodied employees of her section are required to perform, with the exception of lifting. She has been commended for service to the postal system and received a certificate for her performance. This plaintiff has suffered the loss of at least \$1000 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and of the Equal Employment Opportunity Commission.

30. Plaintiff Julie Whitley has worked for the postal service for 10 years. She is a regular full time employee of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Ms. Whitley has physical problems with her lumbar spine, resulting in an inability to lift heavy objects and to stand for long periods. She was injured on the job. She was cleared for assignment to light duty work by the medical examiner of the postal facility. Mr. Whitley's physical handicap does not interfere with her work as a clerk and allows her to complete the same tasks which the ablebodied employees of her section are required to perform, with the exception of lifting. She has been commended for service to the postal system. This plaintiff has suffered the loss of at least \$2000 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and of the Equal Employment Opportunity Commission.

31. Plaintiff Carolyn Davis has worked for the postal service for 5 years. She is a regular full time employee

of the Main Post Office at 433 West Van Buren Street, Chicago, Illinois. Ms. Davis has physical problems with her spine, resulting in an inability to lift heavy objects. She was cleared for assignment to light duty work by the medical examiner of the postal facility. Ms. Davis's handicap does not interfere with her work as a clerk and allows her to complete the same tasks which the able-bodied employees of her section are required to perform, with the exception of lifting. This plaintiff has suffered the loss of at least \$1000 in wages and has suffered harassment, such as being required to carry and produce medical identification at all times. The plaintiff has complained to the appropriate personnel of the American Postal Workers Union and of the Equal Employment Opportunity Commission.

32. Defendant William F. Bolger is Postmaster General of the United States and bears ultimate responsibility for the employment policies and practices which govern the Chicago Postal Service. ??

33. Defendant Frank C. Goldie is Chicago Postmaster and bears direct responsibility for the employment policies and practices which give rise to this action.

34. Defendant R. B. Gould is Regional Director of Employees and Labor Relations for the Postal Service Central Region and has endorsed the employment policies and practices regarding employees assigned to light duty.

Factual Basis

35. Since 1979 and prior thereto, the policy of the United States Postal Service in Chicago has been to assign light duty employees to work schedules which frequently result in less than a full work week, with resulting loss of pay. This policy includes the denial of overtime to light duty employees and the imposition of irregular starting and finishing times for light duty employees. This policy also allots lesser consideration to

scheduling light duty employees, regardless of seniority, than to scheduling non-light duty employees.

36. It is the further policy of the Postal Service to schedule light duty employees for work on evenings and weekends only, thereby inhibiting their access to the health care unit and personnel department at the postal facility and their access to church services and family gatherings.

37. The plaintiffs believe that it is the policy and practice of the postal service to make no effort to determine the individual abilities of an employee assigned to light duty and to make no reasonable accommodation to individual disabilities. In particular, the practice of the postal service is to seat individuals with back injuries at stools having no backs despite contrary medical indications.

38. The plaintiffs believe that the true intent of the aforesaid policies is to reduce the number of light duty employees in the Chicago Post Office, despite the stated policy that the needs of the service require such practices. The needs of the service have failed to require similar practices with respect to non-light duty employees, even though such non-light duty employees may be performing tasks identical to those on light duty.

39. The applicable statute provides in part as follows:

No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicaps, be denied the benefits of, or be subject to discrimination . . . under any program or activity conducted by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978.

Title 29, U.S.C. Sec. 794 (o) (1978)

40. The defendants have breached their duties under the statute have failed to take affirmative steps to accommodate the needs of the physically handicapped and have harassed and intimidated such persons.

WHEREFORE, the plaintiffs, individually and on behalf of all other United States Postal Employees similarly situated, pray for:

1. A permanent injunction against these defendants prohibiting discrimination in work schedules and assignments;

2. Back pay for work lost as the direct result of the policies and practices of these defendants;

3. Damages for pecuniary losses and for mental and physical suffering;

4. Costs, including reasonable attorney's fees;

5. Such other relief as justice may require and as the court deems to be proper.

/s/ James G. Condon
JAMES G. CONDON
180 N. LaSalle Street
Chicago, IL 60601
822-6830

/s/ Dolores V. Horan
DOLORES V. HORAN
180 N. LaSalle Street
Chicago, IL 60601
822-4554
Advocates for the Handicapped
Legal Committee

AFFIDAVIT OF MAILING

The undersigned being first being duly sworn under oath, deposes and says that she served a copy of the foregoing SECOND AMENDED COMPLAINT AT LAW upon the aforementioned attorneys at the aforementioned address(es) by placing a true and correct copy thereof in an envelope addressed as aforesaid, with postage prepaid and depositing the same in the U.S. Mail at Chicago, Illinois, on May 4, 1981.

/s/ Anne Dudek

SUBSCRIBED and SWORN to
before me this 4th day of
May, 1981.

James J. McClasky
Notary Public

United States Attorney
Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois

Attorney General
United States of America
Department of Justice
Washington, D.C.

NATIONAL AGREEMENT BETWEEN
UNITED STATES POST OFFICE AND
APPLICABLE UNIONS

ARTICLE 8, SECTION 8.4

Overtime work

A. Overtime pay is to be paid at the rate of one and onehalf ($1\frac{1}{2}$) times the base hourly straight time rate.

B. Overtime shall be paid to employees for work performed only after eight (8) hours on duty in any one service day or forty (40) hours in any one service week. Nothing in this Section shall be construed by the parties or any reviewing authority to deny the payment of overtime to employees for time worked outside of their regularly scheduled work week at the request of the Employer.

C. Wherever two or more overtime or premium rates may appear applicable to the same hour or hours worked by an employee, there shall be no pyramiding or adding together of such overtime or premium rates and only the higher of the employee's applicable rates shall apply.

D. The parties to this Agreement recognize that sustained and excessive levels of overtime, particularly where it is being worked by non-volunteers, are not ultimately beneficial to the Postal Service or the employees. The subject of sustained and excessive overtime, where it is being worked by non-volunteers, is a proper topic for discussion at Regional Labor-Management Committee meetings. The parties will meet to discuss particular problem areas and to identify appropriate avenues of resolution. If the matter is not resolved, it may be referred to the Labor-Management Committee at the National level. In addition, any disputes on this subject may be processed through the Grievance-Arbitration procedure in accordance with Article 15.